

CONFIDENTIAL

DDI-552-74

25 February 1974

MEMORANDUM FOR: Deputy Director for Intelligence

SUBJECT : Status Report on Agency Support of the NSC
Interagency Law of the Sea (LOS) Task Force

A. BACKGROUND

1. The Interagency LOS Task Force was created by executive order in 1970. CIA was asked to be a member of the Task Force Working Group, and OBGI was designated to provide the Agency representative. Later, the LOS Task Force was placed directly under the NSC Undersecretaries Committee.

2. CIA participation, relatively small compared with some other agencies and departments, has consisted of: (a) information support to the Task Force; (b) review and comments on NSC oceans policy studies for the White House; and (c) preparation of memoranda and current intelligence articles on LOS and related topics.

3. In recent months, additional Agency support has been sought by John Norton Moore, the Chairman of the Task Force. He has asked CIA, and the Agency has agreed, to undertake several specific assignments in support of preparations for the International LOS Conference scheduled for 20 June to 29 August 1974 in Caracas.

B. ASSIGNMENTS

1. To prepare a series of LOS country studies on a number of selected countries. Using the Agency's area expertise and research and reporting capabilities, these studies include pertinent basic factual information and an analysis of each country's record, interests, and policies on the major LOS issues. Appropriate maps will accompany each country study.

2. To prepare one or two "mini-atlases" on LOS subjects: These reports will be single-sheet information pieces similar to OBGI's Geographic Memoranda. They will be Unclassified, generous with graphics, and limited in text. The audience will be important policymaking and lawmaking people who have indirect responsibility or interest in LOS matters but have not been following developments closely.

State, NSC, JCS declassification & release instructions on file

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Approved For Release 2001/09/05 : CIA-RDP80B01495R000800130001-9



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4. To prepare special reports on specific geographic, political, and economic topics. These include special problem areas such as islands, archipelagos, semi-enclosed seas, deep mining capabilities of foreign powers, chances for favorable vote on LOS positions, etc.

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5. To collect information on foreign activities and statements related to LOS,

25X1C



C. CURRENT STATUS

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1. Country studies. These are being prepared primarily by OBGI. [redacted] OCI, OER, and OSR will coordinate and will be invited to make specific contributions. Design of a format prototype and drafting of three studies are nearing completion. Target is to produce 35 to 50 studies by Conference time.

2. Mini-atlases. OBGI has the outline and research completed for a mini-atlas on the basic LOS issues. Writing will commence shortly. Production time estimated to be 2 months. Discussion is being initiated with OER to prepare a mini-atlas on transportation implications of the LOS issues.

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4. Special reports. Several LOS and LOS-related studies have recently been published by OBGI. These include:

- a. Indonesia's Archipelago Waters
- b. The West Coast Korean Islands
- c. The Malacca-Singapore Straits: Passageway of International Concern
- d. East Asian Contested Islands

attached.

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The following reports are nearing completion:

e. Soviet Activities in Exploration and Exploitation of the Seabeds

f. The East Asian Continental Shelf: Resources, Claims, and Problems

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OPR has assigned an analyst to produce a political analysis of the main LOS issues and their implications, [REDACTED]

25X1C

STATSPEC

5. Collection. In response to requirements prepared by OBG I [REDACTED] has appreciably broadened and stepped up its collection on LOS topics from foreign broadcasts, newspapers, and selected books and journals. [REDACTED]

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D. RESOURCE INVESTMENT

At present, as best I can estimate it, DDI resource investment (professionals and intelligence assistants) is as follows:

OBGI:	GD - 5; CD - 1; Production Staff - 1 7
OCI:	1 full time; 2 or 3 part time 2
OER:	1 full time; 2 or 3 part time 2
OPR:	1 full time; 1 part time 1 1/2
CRS:	several part time (will increase greatly when CRS goes into production) 2 to 3
	1 part time 1/2

STATSPEC

As momentum increases, these figures will increase. CRS may have 15 - 20 people on biographic studies a month or six weeks from now. I estimate the rest of the Offices, overall, will need an increased manpower investment of 15 - 25%.

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JOHN KERRY KING
Director

Basic and Geographic Intelligence

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TO:


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SUSPENSE

Date

Remarks:

Did your people
 ever get proper
 credit for the high
 quality and quantity
 of work they've
 done on this? -


 DCI/DDCI
 12/11/74

THE DIRECTOR

You asked whether our people had ever gotten proper credit for the high quality and quantity of work they had performed in support of the NSC Interagency Law of the Sea Task Force.

The answer to your question is, in general, "YES."

STATINTL

Letters and notes of commendation have been written to many of those involved. In addition, our highly professional representative on the LOS Task Force Working Group, OBGI's [REDACTED] has been approved for receipt of the Certificate of Distinction and has recently been promoted. Moreover, his tireless administrative assistant has received a QSI.

Ed Proctor

*Done
by phone*

[REDACTED] STATINTL

[REDACTED] STATINTL

MEMORANDUM FOR: *File LOS*
EWP (info PW/M/L/JP)

The answer to Mr. Colby's question, according to JKK, is in general "Yes."

Apropos of this, JKK informs me that he just learned that [REDACTED] has been OK'd for the Certificate of Distinction for his LOS efforts and that he (JKK) was going to invite you to do the honors at a ceremony for [REDACTED] *Done 14 Jul 74*

Will you do?

Yes? *when?*

No? *19-28 Jan.*

Other? *Please prepare short note to DCI on this question*

11 December 1974
(DATE)

Ben

FORM NO. 101 REPLACES FORM 10-101
1 AUG 54 WHICH MAY BE USED.

(47)

MEMORANDUM FOR: The Director *74-6864*

Although you probably know that we are participating in the Government's preparations for this summer's International Law of the Sea Conference, you may not appreciate how much we are doing on this subject and potentially how important the outcome of this conference may be to the US economic, military, and political interests.

Attached is a memo from Jack King outlining the various things we are doing. We could arrange a 30-minute briefing for you if you wish on the problems of the Law of the Sea.

Paul V. Walsh
Acting DDI

4 March 1974
(DATE)

FORM NO. 101 REPLACES FORM 10-101
1 AUG 54 WHICH MAY BE USED.

(47)

LAW OF THE SEA

1. Ken Rush letter, requesting CIA Support
2. Flanigan letters
3. Draft Instructions to US Delegation, Caracas
4. CIA Support
 - a. Paul Walsh outline
 - b. OPR Memo: Issues and Implications
 - c. OBGI Memo: East Asian Contested Islands

TAB

74-138

THE DEPUTY SECRETARY OF STATE

WASHINGTON

January 7, 1974

NSC UNDER SECRETARIES COMMITTEESECRET

Dear Bill:

As you know, the Third United Nations Conference on the Law of the Sea began with an organizational session last month. The first substantive session will be held in Caracas, Venezuela from June 20-August 29 with a subsequent session, if necessary, to be held no later than 1975.

The Law of the Sea Conference is one of the most important multilateral negotiations in which the United States has participated. At stake is an agreed regime for the oceans which will delimit national and international rights in navigation, living and non-living resources, protection of the marine environment and many other issues. It is important that we have continuing up-to-date information about the positions of key countries and that we prepare as thoroughly as possible. For this reason, I have requested John Norton Moore, the Chairman of the NSC Interagency Task Force on the Law of the Sea to form a new Working Group of the Task Force to develop and maintain information about the positions of the key countries in the negotiations and other information helpful to the negotiating effort. I would greatly appreciate it if the CIA, which has already been a most helpful participant in the work of the Task Force, would participate in the new Working Group. More specifically, it would help the new Working Group as it begins its work if the CIA could undertake the following projects for the Working Group:

(1) Completion of country analyses for all countries in the negotiations. These analyses would include information concerning the positions of the country on all major issues in the negotiations as well as its principal national interests in the negotiations;

The Honorable
William E. Colby,
Director, Central Intelligence Agency,
Washington, D.C.

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GDS

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(2) Participation in the Task Force Working Group consideration of voting estimates for key issues;

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(4) Preparation of several "mini-atlases", on issues designated by the Working Group; and,

(5) Such additional studies as may, from time to time, be suggested by the new Working Group of the Task Force.

We have greatly appreciated your assistance to the Task Force and look forward to continuing close cooperation as the substantive session of the Conference approaches.

Sincerely,



Kenneth Rush
Chairman

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EXECUTIVE SECRETARIAT

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Remarks:

Please prepare reply for DCI's signature.

Executive Secretary

8 January 1974

Date

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EXECUTIVE SECRETARIAT

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Remarks:

For information and appropriate action
to include oral comment to the DCI.

Executive Secretary

7 March 1974

Date

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March 6, 1974

52595

TO: The Honorable
James R. Schlesinger
Secretary of Defense
Room 3E880, Pentagon

FROM: Peter M. Flanigan
Executive Director

SUBJECT: Department of Defense Interests in the Law of the
Sea Negotiations

As you are no doubt aware, this summer the United States and 147 other nations will meet in Caracas to begin substantive negotiations on a comprehensive treaty governing the Law of the Sea. Last summer a number of agencies, led by the Treasury Department, were concerned that the U.S. policy positions on several of the outstanding issues did not adequately protect U.S. economic interests. This was alleged particularly to be the case in relation to our position regarding deep seabed mining.

Because of this concern, a State-chaired interagency task force conducted a lengthy review of U.S. economic interests in the Law of the Sea negotiations. This review has concluded that while most U.S. LOS policy is consistent with our economic interests, some of our positions have been adopted for foreign policy reasons or for bargaining purposes in order to preserve vital security interests (e.g. unimpeded transit through straits). Naturally, those of us whose principal focus is economic are concerned that whatever economic concessions are made in any negotiation, be made for concrete advantages in other fields and not conceded for insubstantial purposes.

It is with interest, therefore, that my attention was drawn to a paper (attached at Tab A) by Robert E. Osgood, formerly a member of the National Security Council staff, and, as I understand, a prime mover in the early development of U.S. LOS policy in the first Administration. Mr. Osgood's paper is rather critical of our current Law of the Sea policy, seems to indicate that our security interests can be satisfactorily accommodated without a new treaty, and implies that the negotiations may even jeopardize existing U.S. interests.

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cont.

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Moreover, my staff informs me that the Navy's Center for Naval Analysis has prepared a rudimentary intelligence analysis of where other nations stand on the important LOS issues, and that the preliminary CNA analysis indicates that as of now the U.S. will not, in fact, achieve its security objectives in the international negotiations.

I would think that you might wish to consider views such as these, assuming they represent reasoned analysis, when reviewing DOD's ultimate position on U.S. Law of the Sea policy. Currently, the State-chaired interagency task force is preparing a review of U.S. LOS policy which is to take into account security and foreign policy interests as well as economic ones. Perhaps this may be the most appropriate forum in the immediate future for DOD views to be expressed. I am informed, however, that the initial draft of the review paper does not address the types of concerns that arise from reading the Osgood article or from the CNA analysis. I find this rather troubling, particularly insofar as we may be setting policy without adequate intelligence analysis regarding the probable outcome of any negotiation.

I have asked my staff to prepare a paper which develops some of the questions that seem to arise from both the Osgood article and the CNA analysis. I am attaching it at Tab B in case you believe there may be merit in addressing some of the issues raised prior to production of a final NSSM or issuance of a national security decision memorandum.

Attachments

Tab A - Paper by Robert E. Osgood
Tab B - Defense Interests in the
Law of the Sea

cc: Secretary of Treasury
Deputy Secretary of State
✓ Director, CIA
Director, OMB
Deputy Assistant to the President
for National Security Affairs

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EXECUTIVE SECRETARIAT

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Remarks:

For information and appropriate action
 to include oral comment to the DCI.

Executive Secretary
 7 March 1974
 Date

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March 6, 1974

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TO: The Honorable
Kenneth Rush
Deputy Secretary
Room 7220, New State

FROM: Peter M. Flanigan *pmf*

SUBJECT: Preparations for Review of U.S. Policy on the
Law of the Sea

As I am sure you are aware, the interagency task force on the Law of the Sea, chaired by the Department of State, is currently preparing a comprehensive review of U.S. policy and interests in the LOS negotiations. As I expressed in my memo to you of January 3, I am particularly concerned that this review adequately and fairly address the major policy issues facing the U.S., and not concentrate on secondary issues or tactical negotiating options.

I have been informed by my staff that the initial draft of the review does not adequately focus on the major U.S. interests and policy issues at stake in the Law of the Sea negotiations. Rather, after a cursory pro and con preamble, it launches into a detailed discussion of tactical options to achieve a negotiated treaty. In light of our experience at the preliminary UN meetings in the Law of the Sea, it seems essential to me that we focus high level attention once again at what we expect to achieve at these negotiations, and only then how we propose to achieve it. I would urge that the next draft of the overall LOS review take into account what I perceive to be a need for elucidation and consideration of these important issues at high levels within our government. Following such a consideration, I would think that a tactical paper would be most appropriate.

In particular, I believe the review should focus on our objectives at the Conference, the alternatives to a comprehensive treaty (either as a policy option or as a fallback should the Conference fail to reach agreement), what type of revenue sharing or seabed authority we should pursue, and what type of conditions in the treaty might render the treaty unacceptable.

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cont.

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I also understand that Deputy Secretary Simon is sending you a memorandum suggesting a meeting to discuss the recently completed economic review of our LOS position. I would second his suggestion and urge that the meeting be held as soon as is convenient upon your return.

cc: Secretary of Treasury
Secretary of Defense
Director, OMB
Director, CIA
Deputy Assistant to the
President for National
Security Affairs

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29 March 1974

NOTE FOR THE DIRECTOR

SUBJECT: Draft Instructions for Law
of the Sea Conference

Your comments and/or concurrence on the instructions for the Law of the Sea Conference are due to Secretary Rush by COB Friday, 5 April. We will have a draft response ready for you by COB 3 April. This, of course, will not go into the many problems embraced by the Law of the Sea negotiations. If your schedule can accommodate, I think it would be worthwhile for you to have a 30-minute informal briefing with [REDACTED]. There is a possibility that the Under Secretaries Committee will hold an early meeting to discuss this paper.

STATINTL

Either Paul or I should represent you at this meeting to provide continuity.

STATINTL [REDACTED]

Ed Proctor

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Remarks: *Pls prepare reply for DCI's signature*

28C
A/Executive Secretary
3/27/74
Date



DEPARTMENT OF STATE

Washington, D.C. 20520

Executive Registry

74-874/2

NSC UNDER SECRETARIES COMMITTEE

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NSC-U/SM-137C

March 27, 1974

TO: The Deputy Secretary of Defense
 The Assistant to the President for
 National Security Affairs
 The Director of Central Intelligence
 The Chairman of the Joint Chiefs of
 Staff
 The Deputy Secretary of the Treasury
 The Deputy Attorney General
 The Under Secretary of Interior
 The Under Secretary of Commerce
 The Under Secretary of Transportation
 The Director, Federal Energy Office

SUBJECT: Draft Recommended Instructions for the
 Law of the Sea Conference

Attached are (1) the Law of the Sea Task Force Chairman's Summary of the draft recommended instructions for the US Delegation to the Third UN Conference on the Law of the Sea, prepared pursuant to NSDM 225 and NSDM 240 by the Inter-agency Task Force on the Law of the Sea, and (2) the draft recommended instructions.

Addressees are requested to submit agency comments and/or concurrences on the draft recommended instructions in writing by c.o.b. Friday, April 5, 1974 to Mr. Stuart H. McIntyre, Staff Director, Interagency Task Force on the Law of the Sea (D/LOS, Department of State; telephone 632-9514).

Brandon Grove, Jr.
 Brandon Grove, Jr.
 Staff Director

Attachments:

As stated

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cc: The Director, Office of Management
and Budget
The Chairman, Council on Environmental
Quality
The Executive Director, Council on
International Economic Policy
The Director, National Science Foundation
The Chairman, Council of Economic Advisers
The Administrator, Environmental
Protection Agency
The Deputy Director, United States
Information Agency
The Director, Agency for International
Development
The Special Representative of the President
for the Law of the Sea Conference

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March 25, 1974

Proposed Instructions for the
Third United Nations Conference on
the Law of the Sea

Prepared Pursuant to NSDM 240
by the NSC Interagency Task
Force on the Law of the Sea

John Norton Moore
Chairman, the NSC
Interagency Task Force
on the Law of the Sea
and Deputy Special
Representative of the
President for the Law of
the Sea Conference

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CLASSIFIED BY Brandon Brown, Jr.
EXEMPT FROM GENERAL DECLASSIFICATION
SCHEDULE OF EXECUTIVE ORDER 11652
EXEMPTION CATEGORY 3
AUTOMATICALLY DECLASSIFIED ON date unknown

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NSDM 240: The Third United Nations Conference
on the Law of the Sea

The President directed in NSDM 240 that the Chairman, NSC Under Secretaries Committee, forward recommended instructions for the U.S. Delegation to the June-August 1974 session of the Law of the Sea Conference for consideration by the President. The recommended instructions follow.

Introduction

The first substantive session of the Law of the Sea Conference is scheduled for Caracas from June 20 to August 29, 1974. New instructions can be most effectively implemented if they are approved well in advance of the Conference, in order to permit pre-Conference consultations and negotiations with other governments. Accordingly, it would be most helpful to the delegation to have approved instructions by April 15, 1974.

Pursuant to NSDM 225 of July 16, 1973, a comprehensive review of U.S. economic policy interests relating to the law of the sea negotiations has been undertaken by the NSC Interagency Task Force on the Law of the Sea, and the findings of that review are taken into consideration in these recommended instructions together with other important aspects of the U.S. law of the sea position, including political, strategic, environmental, and scientific interests.

A summary of existing substantive positions and negotiating authority is attached at Tab A. This report contains recommendations for changes or additions thereto. Accordingly instructions issued pursuant to this report, together with those portions of earlier instructions not superseded, would constitute the instructions for the Conference.

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It is recognized that a large number of detailed substantive matters will need to be addressed by the Conference. This paper deals with major issues, particularly where there are differences of opinion. On other matters it is contemplated that the delegation would, as in the past, be able to make substantive and textual refinements in the U.S. position consistent with the instructions.

A copy of the Report on the Organizational Session of the Law of the Sea Conference, held in New York from December 3-15, 1973, is attached at Tab B.

A. General Objectives

(1) Background of the Third United Nations Conference on the Law of the Sea

The present legal regime for the oceans is largely embodied in the four 1958 Geneva Conventions concluded at the First United Nations Conference on the Law of the Sea as supplemented by customary international law and a network of bilateral and limited multilateral fisheries and pollution control agreements. This legal regime is inadequate and is likely to become increasingly so in the absence of a new comprehensive oceans law regime. There are at least three major reasons for the inadequate nature of the present legal regime. First, the 1958 Conference failed to agree on the breadth of the territorial sea, a failure repeated at the Second United Nations Conference on the Law of the Sea held at Geneva in 1960. Second, the present legal regime is increasingly being challenged by the large number of new states which have become independent since World War II. At the time of the formation of the U.N. system there were only about 50 independent states. Today this number has tripled to approximately 150, most of which became members of the U.N. after the First and Second U.N. Conferences on the Law of the Sea. These states have made increasingly insistent claims to participate in the formation of a new oceans law. Many are not signatories of the Geneva Conventions and have felt free to make broad unilateral claims which in many cases have been damaging to U.S. interests and in

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violation of international law. This tendency of the newer states to make sweeping unilateral claims has been reinforced by their strong concern for their development and their dependence on a particular ocean use such as fisheries. Third, there has been an intensification of old ocean uses and development of new uses and problems largely associated with an increasing demand for ocean resources, global modernization, and a burgeoning ocean technology. The dramatically increased pressure on fisheries during the last decade is an example of this intensification with respect to a traditional ocean use. Similarly, it is now evident that there must be adequate protection for the ocean environment and that the capacity of the ocean to absorb pollution is not unlimited. With respect to development of new ocean uses, the rapidly developing deep seabed mining industry provides a good example. In all three cases the U.S. is directly and adversely affected by the lack of a satisfactory agreed international legal regime.

In areas in which there have been major differences in ocean law, for example problems associated with fishery differences between the United States and Chile, Ecuador, and Peru, or navigational disputes between the U.S. and Canada and Indonesia, it has generally been politically inexpedient for the U.S. to protect its interests by the use of force. In the highly interdependent world in which we now live this is likely to continue to be the case except for the most serious threats affecting vital national interests. It is also likely that all of the factors making for a breakdown of the present legal regime for the oceans will continue or intensify in years ahead in the absence of widespread agreement on a new comprehensive legal regime. In fact, should there be a breakdown in current efforts to reach agreement, the expectations raised throughout the world and the political attention focused on the issue are likely to accelerate the trend to unilateralism in the oceans. The combination of increased unilateralism and persistent U.S. unwillingness to protect its interests against such unilateralism off foreign nations would be highly unsatisfactory for protecting U.S. ocean interests and for promoting a sensible overall ocean regime in the common interest of all nations. Moreover, it is likely

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that the U.S. may well extend its jurisdiction unilaterally as evidenced by the 200-mile fishery bills currently pending in both Houses of the Congress. Such a unilateral extension by the U.S. could bring the U.S. into increasing conflict with foreign nations such as the U.S.S.R. and Japan off our own shores and make it more difficult to protect our interests off foreign shores.

The Third United Nations Conference on the Law of the Sea takes place against a background of over five years of preparatory work within the United Nations system, preparatory work stimulated by the real problems surrounding the legal regime for the oceans. The last three years of this work took place within the formal setting of the U.N. Seabed Committee under a mandate charging it with preparing for a comprehensive Conference on the Law of the Sea. The United States participated in a leadership capacity in this preparatory work and the U.S. position at the Conference will be carefully appraised by other nations in light of the President's Ocean Policy Statement of 1970, United States actions and statements during the preparatory phase, and Congressional resolutions and statements. As in all areas of U.S. foreign policy, the stability of the U.S. course and the credibility of U.S. words and actions are of the utmost importance.

(2) U.S. interests to be served by a comprehensive ocean law treaty

The United States has a variety of important interests which would be served by a comprehensive ocean law treaty and which should be sought at the Conference. Among them are the following:

(a) protection of navigation in the territorial sea and areas beyond, particularly the protection of freedom of navigation and overflight on the high seas and in areas adjacent to the territorial sea which may be subject to coastal state resource jurisdiction;

(b) protection of unimpeded transit through and over straits used for international navigation;

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(c) coastal state resource jurisdiction to explore and exploit the mineral resources of the adjacent continental margin areas;

(d) a fisheries regime which will place coastal and anadromous fisheries under coastal state management with at least preferential rights in the coastal state, which will place highly migratory species under regional or international management and which, to the extent consistent with these goals, will protect traditional fisheries;

(e) a stable legal regime for deep seabed mining which will ensure access by U.S. firms to deep seabed mineral resources under reasonable conditions for exploitation;

(f) a jurisdictional basis for sound environmental protection of the world's oceans and appropriate legal obligations and procedures to protect the marine environment and the living resources of the oceans;

(g) a regime for marine scientific research which will encourage rather than discourage the conduct of research and the dissemination of results;

(h) a regime which will protect high seas uses including SOSUS which is a vital element in our arms control equation with the U.S.S.R.;

(i) appropriate international standards applicable to coastal state resource jurisdiction which will promote efficient utilization and conservation of the resources and accommodation with other uses. These include:

1. mineral resources of the
coastal seabed economic area

(a) standards to protect other uses of the area, particularly to ensure no unreasonable interference with navigational or other high seas freedoms;

(b) standards for protection of the marine environment; and

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- (c) protection of the integrity of agreements and investments made in the area.

2. living resources

- (a) standards to ensure adequate conservation of stocks and dependent species;
- (b) standards to ensure full utilization of stocks up to the allowable catch; and
- (c) standards to ensure some protection for traditional fisheries to the extent consistent with overall fishing goals.

(j) a widely accepted and reasonably definite legal regime coupled with adequate machinery for the compulsory settlement of disputes in order to minimize conflict and promote stability of expectations and adherence to treaty requirements;

(k) a regime which will protect the integrity of agreements and investment relating to the development of ocean resources;

(l) an agreement which will implement the concept of the common heritage by establishing an international legal regime in the common interest of all nations and by providing revenues for international community purposes, particularly assistance to developing nations;

(m) a regime which will establish exclusive coastal state rights and coastal state duties with respect to the construction, operation and use of deep water ports and other structures that affect coastal state economic interests beyond the territorial sea;

(n) an agreement which will prevent and remove, where consistent with overall U.S. objectives, present or future bilateral ocean use problems damaging to U.S. relations with particular countries, for example, fisheries disputes and archipelago problems; and

(o) a timely agreement which will promote these objectives.

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With the possible exception of broadly extending U.S. resource jurisdiction over continental margin mineral resources and fish stocks, all of these objectives are endangered by a continuation of the present trend toward unilateral action and a breakdown in the existing legal regime for the oceans. At least with respect to coastal fishery stocks, since the principal distant water fishing nations off the U.S. coast are Japan and the USSR and its allies, any effort by the U.S. to achieve a unilateral solution without their agreement could be quite costly even if this were the general trend worldwide. It would be possible to mine the resources of the deep seabed without an international agreement. In this area as well, a good international legal regime would provide greater certainty and predictability for investment than would a hodgepodge of national legislation and competing claims. A good international legal regime would also provide greater protection for other ocean uses such as SOSUS.

(3) Some fundamental objectives

It is of course true that a Treaty which institutionalizes a bad ocean regime may be worse than the present drift to unilateralism. Accordingly, it is imperative that the U.S. provide strong leadership toward a good ocean regime. It also follows that the U.S. should not accept any Treaty without regard to the substantive content. In this connection the U.S. Delegation has repeatedly made it clear that the U.S. will not accept a Treaty which does not protect unimpeded transit through and over international straits or which does not adequately protect navigational and other high seas freedoms in areas beyond the territorial sea. Similarly, it has been made clear that the U.S. will not accept a Treaty that does not protect U.S. basic resource interests and any deep seabed regime must provide for access by U.S. firms under reasonable conditions for exploitation of deep seabed mineral resources. The U.S. has also made clear the importance which it attaches to compulsory dispute settlement procedures and to an enduring Treaty which will be widely adhered to and respected.

The absence of a discussion above or statement by the delegation that a particular interest is of great importance does not necessarily indicate that the interest is of lesser importance. For example, because of a strong trend in the negotiations toward substantially broadened

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coastal state resource jurisdiction as well as the probability that a balanced posture on resource issues will better promote all U.S. objectives, including U.S. resources objectives, the delegation has not found it necessary to make similar statements with respect to ensuring coastal state control of continental margin mineral and coastal fishery resources. Another example is that, for security and tactical reasons, we have avoided statements concerning our interest in the protection of SOSUS. Any final decision on the acceptability of an overall treaty must, of course, take into account not only interests publicly stated to be vital to U.S. acceptance but also the overall accommodation of all U.S. objectives. Similarly, any such decisions should realistically compare the proposed resolution of a particular issue with the probable resolution of the issue in the absence of a comprehensive agreement.

(4) Alternative and fallback strategies

The full range of U.S. oceans objectives can be best served by a timely and satisfactory comprehensive oceans law treaty. Bilateral and limited multilateral approaches, which have been the norm in recent years, have not adequately protected U.S. oceans interests. Many issues such as the breadth of the territorial sea require clear resolution if we are to achieve appropriate stability of expectations. A bilateral or multilateral approach, however, would require an agreement with a large number of states and the resulting politically and economically costly hodgepodge of relationships would be unsatisfactory. Other issues, such as the protection of coastal fisheries, may require agreement with states which have little incentive to agree except in an overall comprehensive oceans law settlement.

Similarly, a network of individual multilateral agreements on separate issues, perhaps following the 1958 model, would not adequately protect U.S. oceans interests. Important U.S. interests extend over a broad

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range of issues and a separate treaty approach risks excluding some of those issues. Such a separate approach would also provide less leverage to the U.S. on a number of important objectives, particularly U.S. navigational and coastal fishery objectives, than would a comprehensive single convention. Finally, separate treaties are likely to create a confusing pattern of legal relations between parties to the new conventions and the 1958 Geneva Conventions and could not as satisfactorily contribute to the needed stability of expectations and avoidance of conflict in oceans uses.

If, of course, it does not prove possible to conclude a timely and successful comprehensive oceans law treaty, the U.S. may wish to pursue alternative strategies for particular issues, at least until such time as a successful comprehensive treaty proves feasible. In this connection, the U.S. has publicly stated that if agreement is not reached by the end of 1975 it will consider alternative national legislation as a means of providing a satisfactory investment climate and environmental regulation for U.S. firms interested in deep seabed mining. Similarly, we may need to examine alternative strategies for protection of U.S. coastal fishery stocks if a timely agreement is not concluded. Protection of these or other U.S. interests, if in fact possible, would require agreement among interested and like-minded states if there were to be a complete failure of the Conference.

(5) The role of the Caracas Session of the Conference

The United States should attempt to move the Caracas session as close as possible to explicit or implicit agreement compatible with our substantive interests. A timely Conference is important both because of U.S. fishery and deep seabed interests in timely agreement and because of the need to reach agreement before pressures for unilateral action overtake multilateral opportunities. As such, it is important that we approach Caracas prepared to reach final agreement. Informal talk of a 1976 session may be a self-fulfilling prophecy unless the U.S. takes vigorous action to promote negotiations in Caracas. In this respect our overall posture on all issues will be important in signaling to other nations whether Caracas will be a meaningful session. At the same time, it

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remains as important as ever to clearly communicate vital U.S. interests which must be accommodated if the Conference is to be successful. Few things would be more damaging than a failure of other nations to accurately perceive vital U.S. interests and the U.S. determination to protect those interests.

B. The Territorial Sea

It is widely accepted that a Law of the Sea Treaty would include agreement on a twelve-mile maximum limit for the territorial sea, assuming agreement on other issues such as straits and coastal state resource jurisdiction. The U.S. objective is assuring agreement on the minimum possible breadth of the territorial sea. It is our assessment that agreement on a figure less than twelve miles is not possible.

The U.S. is opposed to reopening the regime of the territorial sea, including innocent passage, outside straits as defined in the 1958 Convention. There are a variety of ways of dealing with this issue, including general language, incorporation by reference of the 1958 Convention and international law to the extent not inconsistent with the new Treaty, or express inclusion of the 1958 Convention language.

If a negotiation does occur on the question, we should work for a more favorable innocent passage regime.

In essence this consists of retaining as much as possible of the operational flexibility we enjoy under the present formulation, while at the same time restricting the opportunities for unfounded allegations of "non-innocence" by coastal states. Negotiations leading toward an "objectivized" innocent passage regime carry serious risks that the U.S. may be outvoted on politically motivated restrictions. Any list of prohibited activities suggested for a new innocent passage regime would be subject to review and approval by the interested agencies including consultations in Washington as necessary.

C. Straits

The straits negotiation is an unusually sensitive one that requires careful control both within the U.S. Delegation and in our negotiations with other delegations.

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In addition to the general guidance on conduct of negotiations, the contents of this section of the paper will not, directly or indirectly, be discussed outside the Executive Branch, irrespective of security clearance, except as specifically directed by the Chairman of the Delegation or the Chairman of the Task Force in consultation with the senior representatives of the agencies concerned.

Our major opponents on straits are Spain, Egypt and other Arab States, Malaysia, Indonesia, the Philippines, and Tanzania. They are all supporting some type of regime described as innocent passage, but in many respects even more restrictive than the 1958 Convention on the Territorial Sea and the Contiguous Zone. While arguing the need for navigation safety and pollution control, and its fear of nuclear weapons, Spain appears to be seeking unrelated concessions such as NATO and EEC membership or British concession on Gibraltar. Egypt and the Arab States seem principally concerned with the Strait of Tiran, although there is some evidence of Egyptian concern over U.S. military use of Bab-al-Mandab or Gibraltar, and some indication that this opposition may have been politically related to the U.S. support for Israel. Malaysia is concerned about pollution in the Malacca Strait, but also desires notice for warship transit. Indonesia and the Philippines are principally concerned with the archipelago issue. Tanzania says its opposition is a matter of principle although it may also be concerned to some extent with its two straits in the Pemba and Zanzibar passages. There is active cooperation among many of these states on the straits issue.

We continue to believe that, as already authorized, we should work with states having straits interests similar to our own with a view to forming a broader common front. Accordingly the following general recommendation is made.

Recommendation

The U.S. Delegation should be authorized, on specific approval of the Chairman of the Delegation in consultation with the Chairman of the Task Force and the senior representatives of the agencies concerned, to indicate privately to the delegations of other countries having interests and objectives similar to those of the United States a

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willingness to negotiate with them draft treaty articles which would be mutually acceptable on straits transit. Any specific draft treaty language formulated in this manner would be subject to expeditious review and approval in Washington prior to public or private support.

With respect to specific substantive issues, two separate types of problems are involved. First, the question of which straits must ultimately remain covered by a regime more liberal than innocent passage. Second, the nature of the regime.

(1) Which straits are covered?

The current U.S. proposal applies a free transit regime to all straits used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign state. It is exactly the same "definition" as appears in the 1958 Territorial Sea Convention article that prohibits the suspension of innocent passage.

As a matter of substance, the current or anticipated U.S. interest in every strait is not the same; indeed it is impossible to predict the relative importance of a given strait in the future. For example, Gibraltar is of obviously vital importance while Messina (between Sicily and the Italian mainland) is of lesser importance. Some of the factors that affect the present and known future relative importance are: nature and extent of anticipated U.S. use (insofar as this can be predicted); availability of a secure alternative route; cost of using an alternative route or ensuring favorable coastal state behavior; and tactical and strategic considerations from possible loss of use. While the U.S. might improve its ability to achieve its straits objectives if the applicability of the article were narrowed, the risk is that of encouraging everyone to seek special treatment.

Several countries have submitted straits transit proposals which exclude certain straits based upon specified criteria or combinations thereof. These proposals have obviously been advanced in efforts to obtain an exclusion for straits of particular concern to the

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countries advancing them or to enlist general support for the concept of unimpeded transit through and over international straits.

While it is unclear what sort of exclusion formula is negotiable, the greatest advantages of using such an approach, and the greatest risks, are tactical. At present, there is an increasing tendency by some developing countries to seek a compromise in terms of the substance of a straits regime. The U.S. strategy is to isolate our principal opponents, particularly Spain, and to neutralize our LDC opponents such as Indonesia by attempting to resolve issues more important to them. The attempt to isolate Spain is based on our underlying assumption that we could not write a straits article at this time acceptable to both Spain and the United States. An exclusion approach offers the possibility of furthering that strategy with some countries while unifying support among countries having maritime interests similar to ours. On the other hand, discussion of exclusions can get out of hand, and must be dealt with very carefully. Accordingly, we believe such discussion should take place only when it is determined, by the Chairman of the Delegation in consultation with the Chairman of the Task Force and the senior representatives of the agencies concerned, that it would be advantageous to the achievement of our overall straits objectives.

The U.S. would, of course, want unimpeded transit in the territorial waters of straits wider than twenty-four miles to the extent that the high seas route in the strait is not equally suitable.

West Germany has a unique problem regarding the entrance to the Baltic from West German ports near the GDR border. We will work with West Germany to ensure the route in question through GDR waters is interpreted to be a strait, but will avoid highlighting the issue during the negotiations.

The types of exclusions discussed below to some extent cover the same straits, (e.g. the Strait of Tiran is covered by two of the formulas). The discussion below accordingly refers to the precise situations in which authority regarding exclusions is authorized; the choice of formulas will be made within the scope of that authority

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on the basis of the tactical situation. The regime of nonsuspendable innocent passage would apply in excluded straits. However, in accordance with authority set out in the marine pollution section, coastal states could not prescribe or enforce construction standards for vessel pollution control in any strait including those covered by these exclusions.

- a) Exception for straits that are narrower than 6 miles or that do not connect two parts of the high seas.

An exception for straits 6 miles wide or narrower involves no change from the current U.S. juridical position, and is acceptable if the current rule of nonsuspendable innocent passage continues to apply. Moreover, such an exception could gain complete support from those straits states (e.g., Italy) which have indicated concern for their particular straits. Additionally, it might resolve the Greek concerns stemming from the treatment of all their waters as being subject to unimpeded transit.

The USSR straits proposal applies only to straits connecting two parts of the high seas, thus excluding the Strait of Tiran, the mouth of the Gulf of Fonseca (often considered "historic"), and the entrance to the Gulf of Honduras. The most politically significant of these, of course, is Tiran, which would also be excluded under a 6-mile exception. There is a basis in customary law for making the distinction because there are currently no high seas in Tiran in anyone's view. More importantly, it offers the hope of reducing Arab opposition to free transit, since many Arab States themselves have an interest in free transit of other straits. Accordingly, we will continue to pursue means of excluding Tiran from free transit without prejudicing the application of the current rule of nonsuspendable innocent passage and in full coordination with our Middle East policy.

Recommendation

The U.S. Delegation should be authorized, on specific approval of the Chairman of the Delegation in consultation with the Chairman of the Task Force and senior representatives of the agencies concerned, to indicate a willingness to accept certain specified modifications of substance which do not affect the critical elements of the U.S. straits proposals. Such indication should initially be made privately to selected countries whose

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attitudes might be expected to be affected by such modifications. Should the reactions of these countries indicate that U.S. negotiating efforts with respect to its straits objectives would be enhanced thereby, the delegation should be authorized to support one or both of the following modifications.

The present international law regime of non-suspendable innocent passage, as codified in the 1958 Convention on the Territorial Sea and Contiguous Zone, would be continued for passage through the territorial sea in those international straits which are:

- 6 miles wide or narrower, or
- although wider than 6 miles, do not connect two parts of the high seas.

b) Islands off the coast

The Italian proposal refers to an exclusion for straits where a suitable alternative route is nearby, although in the context of a six-mile exclusion. The USSR, in its oral interventions, has implied a similar exception regardless of the width of a strait by consistently addressing itself to "major straits." The USSR specifically referred to the straits off Tanzania, caused by the existence of islands; in such cases there are high seas routes on the other side of the islands and accordingly the straits are not considered "major" by the USSR. It is our assessment that the islands situation may be responsible, at least in part, for opposition to free transit from Tanzania as well as other states such as Yugoslavia and the PRC, and for difficulties with U.S. allies such as South Korea.

Recommendation

That the delegation be authorized, if the Chairman of the Delegation in consultation with the Chairman of the Task Force and the senior representatives of the agencies concerned determines after appropriate exploration that it would be advantageous to our straits negotiating objectives, to indicate support for the exclusion of straits formed by islands within 24 miles of the coast of the same state where, and only to the extent that, a nearby and equally suitable high seas route is available on the seaward side of the islands.

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As with other exclusions, nonsuspendable innocent passage would continue to apply in the excluded straits. Because of ice and dangerous navigation conditions, the high seas routes to the north of certain Soviet offshore Arctic islands within 24 miles of the coast are not equally suitable. This exclusion would be drafted to ensure that such Soviet Arctic straits are not excluded and that our freedoms of the high seas and right of free transit in the Arctic north of the USSR are not affected. However, we will handle the Soviet issue quietly, as the USSR does not admit that the straits in question are "used for international navigation", or that there are high seas in the Arctic; accordingly, the USSR itself is unlikely to discuss the exclusion in the context of the Arctic because any such discussion would prejudice its Arctic sector position. Moreover, in connection with any such exclusion, at the appropriate time we would create a record regarding the straits covered by the exclusion.

(2) Substance of the regime in straits

The U.S. has proposed that vessels and aircraft, in transit through and over international straits, enjoy the same freedom of navigation and overflight, for the purpose of transit, as they enjoy on the high seas. In all other respects, the status of the waters would be territorial and under the sovereignty of the coastal state. Our support for including all vessels and aircraft, military and commercial, in a straits transit regime continues unchanged.

The U.S. Delegation should continue to insist on retention of the critical elements of the transit right required in straits (except to the extent the authority to exclude certain straits is exercised). These critical elements include unimpeded transit through and over international straits by surface vessels (including warships and tankers), submerged and surfaced submarines, and military aircraft without a requirement for notification to, or authorization from, the coastal state.

As a matter of substance, most states have at least commercial interests in free transit of straits similar to our own. On the other hand, developing countries are fearful of dissipating their negotiating strength by dividing among themselves, and thus may be unduly influenced

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by our opponents such as Indonesia and Malaysia. For our part, we must continue to make it clear that we cannot be expected to become a party to a treaty that does not accommodate our straits objectives; we must persuade the majority that the substance of our position is reasonable, and that we have negotiated in good faith; we must try to accommodate the needs of as many straits states as possible; and we must build as wide support as possible for the essential elements of our proposals.

Recommendations

The U.S. Delegation should continue to emphasize the critical elements of the U.S. straits transit proposals while, at the same time, playing down and discouraging use of the term "free transit". These elements of the U.S. proposals must continue to be presented as essential objectives of the United States but not necessarily in the specific formulation of the U.S. draft straits article.

Consistent with the above recommendation and those relating to which straits are covered, the U.S. Delegation should be prepared, on specific approval of the Chairman of the Delegation in consultation with the Chairman of the Task Force and senior representatives of agencies concerned, to negotiate privately with other countries draft treaty articles on straits transit which would be mutually acceptable. Any specific draft treaty language formulated in this manner would be subject to review and approval in Washington prior to public or private support.

The recommendations shall be carried out in accordance with the following instructions on specific items.

(a) Submarines

Our assessment is that most of the opposition to submerged transit is psychological and political. However, some straits are very shallow, and would be hazardous for submerged navigation, raising the danger of collision between a submerged submarine and a surface vessel. We have, of course, pointed out that it is hardly in the interests of a commander of a submerged submarine to risk collision.

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Since the question of shallowness has only been raised regarding the Danish straits and the Malacca Straits, we believe the best way to handle the issue if it continues to be a problem is to give private assurances to states bordering those straits that we do not and will not navigate submerged there because it is clear that this cannot be done safely, and if necessary and appropriate, we will suggest to the Soviets and certain U.S. allies that they give similar private assurances.

A further objection to submerged transit relates to the coastal state's desire to know of submerged transit by a submarine and its identity. This question has been pressed by Indonesia in connection with archipelagic waters, and will be addressed in that context.

(b) The problem of coastal state security

The U.S.-proposed articles have no provisions dealing with coastal state security. The straits states deal with this problem by the use of "innocent passage." The problem with the requirement that passage be innocent is not that of substantive compliance by the flag state but rather that the coastal state may claim the right to arbitrarily stop passage on the grounds that it is not innocent, or can adopt regulations designed to ensure innocence. The original International Law Commission draft for the 1958 Conference provided a more objective test, namely that passage is innocent so long as the ship does not use the territorial sea to commit acts prejudicial to the peace, good order, or security of the coastal state. The U.S.--concerned about Soviet activities off its coast--supported the change in 1958 to the more subjective criterion that passage is innocent so long as it is not prejudicial to the peace, good order, or security of the coastal state.

The Soviet approach, publicly introduced, and supported by the UK in a privately circulated proposal, is to place obligations on the flag state to avoid specific actions--such as conducting maneuvers, launching aircraft, etc. Thus, while the coastal state has recourse

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against the flag state, the vessel's right of transit itself is not subject to interference. We believe the concept of general flag state obligations is helpful, but that the Soviet approach of a detailed list of prohibited activities raises serious negotiating dangers, (e.g. regarding attempts to add nuclear weapons or other unacceptable limitations to the prohibitions). We are working with the USSR and the UK to develop a mutually acceptable straits article, for which we intend to seek NATO, EEC, and other support, in which the concept of general flag state obligations is the key element.

Conceptually, most if not all of the concerns regarding "innocence" relate to actions that are not in fact "transit." The U.S.-proposed right applies to vessels and aircraft "in transit...for the purposes of transit." We have made it clear that we are only seeking a transit right, not a right to conduct any other activities. A reasonable interpretation of our article and our own statements in fact prohibits most if not all of the activities on the Soviet list. Since we in fact have explained our article as if the transit right exists "only" for the purposes of transit, we should be able to accept flag state obligations at least generally.

Another step would be to meet psychological concerns regarding security by a reference to the UN Charter. Since UN Charter obligations apply irrespective of what a Law of the Sea Treaty may say, this approach involves no new legal obligations on our part. Several formulas are possible. (None of these formulas would affect the right of individual and collective self-defense under the Charter.)

(c) Regulation

i) Safety of navigation

There is enormous, and constantly increasing traffic through the major straits of the world. As a major maritime nation, the US has as much of an interest in ensuring traffic safety as do the states bordering straits.

Because of the dramatically increasing volume of shipping, and the size of ships, there have been increased international efforts to regulate traffic in heavily used

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sealanes, including straits. IMCO has established traffic separation schemes, which we have already proposed be made mandatory by the LOS treaty. As traffic increases, more sophisticated vessel traffic control systems in straits analogous to air traffic control systems may become necessary, and are already being discussed. The fact that a ship captain does not desire a collision does not obviate the need for rules and traffic control in a strait any more than it does on a highway or in the air.

The key questions are: What additional regulations beyond those already existing are necessary and desirable, and who should make them?

From the U.S. perspective, we are far better off if regulations are made internationally. This permits us to participate in making them, and reduces the chances for coastal state arbitrariness (even assuming a prohibition on discrimination in form or in fact by the coastal state). It also permits us to obtain necessary warship exemptions in the regulations themselves, rather than seeking a blanket exemption which would be difficult to negotiate.

Straits states, particularly Malaysia and Indonesia, are strongly pressing for coastal state regulation. The reasons are partly political (regulatory powers are inherent in "sovereignty" in the territorial sea) and partly substantive: the international process can be slow and difficult, and may not in their view adequately protect coastal state interests.

The UK--itself both a maritime and straits state--suggested an interesting solution in the safety and pollution context largely designed to meet the political problem. Stated generally, the idea is that straits states would implement the international regulations. This idea might be elaborated in terms of a coastal state right and duty. The proposal would be that a vessel traffic control system for an international strait could be designed by the coastal states, in consultation with major user states, and then submitted to the Inter-Governmental Maritime Consultative Organization (IMCO) for approval. The coastal states would then have the right and obligation to implement the system if approved by IMCO. The major user states would be obligated, if requested by the coastal states, to agree with the coastal states on an

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equitable method of joint financing for the IMCO approved system, preferably in line with general cost-sharing guidelines provided by IMCO. The costs would include buoys, lights, other navigational aids, dredging, etc. This approach would have the distinct advantage of placing the financing obligation on the flag state rather than on individual vessels, thus undercutting a still nascent and undesirable trend toward the idea of individual vessel tolls "for services" in straits, an idea that unfortunately is not completely without precedent in ports and the territorial sea. It also gives us and other users a strong basis for involvement in the design, development, and implementation of any coastal state system. There is precedent for such arrangements in the case of the Red Sea lights north of Bab-al-Mandab which are administered by the UK through a fund constituted by several user states; we and Japan favor an international cost-sharing system for Malacca. Of course, as a practical matter, the coastal state would have a major role in implementing any vessel traffic control system in any event.

Some developing straits states, and perhaps more importantly developing countries generally, should regard the proposal as quite forthcoming. Indonesia, one of the most sophisticated straits states, could be expected to discern our real objective of participation in control, and accordingly object. It is possible that the development implications for Lombok and Sunda straits might soften the Indonesian position somewhat. Finally, and by no means least importantly, because this approach parallels the Japanese strategy in the Malacca Straits, and appears forthcoming to the developing countries, it would be helpful in bringing Japan into a more active role of support of our straits position than has thus far been the case.

Recommendation

We recommend that the Chairman of the Delegation, in consultation with the Chairman of the Task Force and senior representatives of the agencies concerned, be authorized to support a system whereby the coastal state could design a surface traffic control system for international straits which should be implemented only after approval by IMCO, and that, further, major user States would be obligated to agree with straits states on an equitable method of joint financing for such systems.

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ii) Pollution

The U.S. is in a difficult negotiating situation on pollution regulations in straits. The underlying basis for our straits proposal is that the high seas between 3 and 12 miles from the coast would be eliminated. However, the U.S. currently asserts pollution control jurisdiction over ships to the 12-mile limit of our contiguous zone. Thus, our own legislation could be cited as the precedent for coastal state pollution regulation in precisely those straits where we are seeking free transit.

Nevertheless, consistent with the purposes of free transit, we believe we are justified in seeking the same regime for vessel-source pollution in the territorial sea in straits as on the high seas adjacent to the territorial sea. As a practical matter, it is useless to seek lesser coastal state rights in straits than the coastal state enjoys in the high seas areas beyond. Accordingly, our position on coastal state rights with respect to pollution control in straits will be the same as that approved for high seas areas adjacent to a 12-mile territorial sea. Both the standards and enforcement aspects of this matter are addressed in a subsequent section of this paper.

(d) Overflight

Historically, vessels have had an international legal right to pass through the territorial sea without coastal state consent, and this right cannot be suspended in straits. Overflight of the territorial sea, however, requires consent. Thus, while states claiming more than a 3-mile territorial sea can regard the negotiation on vessels as one of defining the parameters of a right unquestioned in principle, they are less likely to regard the overflight negotiation in the same way. The U.S. has based its overflight rights on high seas rights in areas beyond three miles. However, the USSR, and possibly France, assert historic rights to transit certain straits. (It is unclear whether France applies this to aircraft.) The U.S. has not opposed this assertion and it may be advantageous for us to begin to espouse this concept as well.

Our straits overflight problem relates mainly to military overflight. Much of the concern regarding aircraft may be psychological, perhaps because they are capable of

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penetrating the air space over land at high speeds. Some of our opponents have pointed out that the U.S. itself has established an Air Defense Identification Zone extending far out to sea in which all civil aircraft flying toward the U.S. must identify themselves, although the establishment of entry conditions is lawful under the Convention on International Civil Aviation.

It is argued that the chances of an accident affecting the coastal state increase as the aircraft gets closer to land. Our straits proposal applies to civil aircraft as well as military aircraft, and requires that civil aircraft respect ICAO standards. However, under the U.S. proposal, state (including military) aircraft, to which ICAO standards are not applicable, will normally respect those standards while in transit and will, at all times, operate with due regard for the safety of navigation of civil aircraft. (The "due regard" obligation is included in the ICAO Convention, to which the U.S. is a party.) A state would be strictly liable for damages caused by failure of its state (including military) aircraft to abide by the regulations.

A major concern and overflight problem is access to the Mediterranean through the Strait of Gibraltar. Under certain circumstances, such as the resupply of Israel, nuclear overflights, and other flights which require secrecy, routes over land are not available. During the recent Middle East War, Spain denied us overflight of its territory and also sent us a note questioning our overflight of the Strait of Gibraltar.

The U.S. has a fundamental security interest in maintaining its ability to overfly a number of other straits, and the maintenance of secrecy of overflight may in some instances be an essential ingredient of the U.S. operational objectives. In such instances, the filing of routine flight plans, initiation of communications with air traffic control, position reporting, and restrictions on altitude, speed, cargo, and similar matters would be tantamount to a degree of control which could delay or interfere with the military objective and defeat the requirement for secrecy.

On the other hand, a basic aspect of air traffic control is communications with ground controllers. The Soviet (and private UK) straits articles provide for on-the-spot radio communications with the ground. They do not call for advance notification, such as the usual filing of a flight plan.

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We are very reluctant to agree to a communications requirement for state aircraft because of the problem of secret overflights. Secrecy is not a basic part of the normal operations of most military flights which--in the vicinity of a strait--could be picked up on radar. A majority of operational overflight needs do not require secrecy, although sensitive operations do, and indeed military aircraft usually comply fully with air traffic control regulations. Since we believe overflight rights are probably not attainable without additional accommodation on air traffic safety issues, we should at the appropriate time be prepared to accept a requirement of monitoring certain published frequencies for the purpose of receiving ground communications on safety matters.

Recommendation

If the Chairman of the Delegation, in consultation with the Chairman of the Task Force and senior representatives of the agencies concerned, determines that further substantive flexibility is needed, the Delegation is authorized to accept a duty for state aircraft to respond while in the strait to ground communications from the appropriate international air traffic controller on applicable international frequencies for the purpose of verifying course, speed and altitude.

Information regarding origin or destination outside the strait is not necessary for safety purposes in the strait and would not be required under this approach. Moreover, the right of transit is completely independent of any obligation for communication. There is no obligation to obey air traffic control instructions, nor is there any change in our instructions regarding air traffic safety, including the duty to operate with due regard for the safety of navigation of civil aircraft. In the unusual case where secrecy or radio silence is necessary, we may in some instances be able to justify this on grounds of reasonable self-defense precautions.

(e) Liability

The underlying U.S. approach to traffic safety and pollution in straits is that it is preferable to be liable to the coastal state for damage caused by an accident during transit than to give the coastal state broad regulatory authority, or to accept too many international restrictions regarding traffic safety, pollution, and similar matters.

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We have already proposed strict liability with respect to damages resulting from failure to adhere to IMCO traffic separation schemes and ICAO air traffic regulations. If liability is only incurred when a regulation is violated, we are to some extent encouraging more regulation than may be necessary. Moreover, there is no reason why the coastal state should bear any burden regarding damage it suffers from activities which--in a fundamental sense--it cannot and should not control. If two or more vessels or aircraft are involved, damages could be apportioned between them. We should, however, be careful that forthcoming liability provisions are tactically sound in attracting more coastal state support without losing maritime state support.

i) State aircraft and government non-commercial ships (including warships)

The flag State is of course already liable for damages caused by government non-commercial vessels and state aircraft. Moreover, for political and security reasons, we have consistently taken a liberal approach on this matter when an accident occurs. Furthermore, these vessels and aircraft enjoy immunity from coastal state arrest, and we do not want them to be subject to certain regulations (e.g., pollution). Accordingly, the assumption of strict liability is unlikely in practice to make a significant difference, and could significantly enhance our negotiation posture. It will also provide us with a strong argument that the remedy against our public vessels and state aircraft for violating the regulations is flag state liability in the event of damage, not coastal state interference with transit.

Recommendation

That we be authorized to support liability up to and including a rule that the flag state be subject to strict liability for personal injury or property damage to the coastal state or its inhabitants caused by an act of or accident involving a vessel or aircraft entitled to sovereign immunity under international law while exercising the right of transit in the strait.

ii) Commercial vessels and aircraft

Although the fear of supertankers is substantial, the problem is not as great because commercial vessels

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and aircraft, and their owners and operators, are subject to suit in national courts. Moreover, liability for pollution damage from oil tankers--the greatest concern--is already the subject of international agreements. Nevertheless, it could be helpful to deal with this problem in a straits article. Since several developing countries have large or growing fleets, we do not believe the negotiation of this issue is likely to have very substantial risk; accordingly the U.S. can afford to appear forthcoming. In any case, many petroleum companies have established one-tanker corporations intended to limit the possible amount of liability. In fact, in both the commercial navigation and civil aviation fields, the U.S. has been far in advance of others on this question.

Recommendations

1) That we be authorized to support, if necessary, liability of the owner or operator up to and including a rule that the owner or operator of a commercial vessel or aircraft is subject to strict liability (liability as circumscribed in Article III in the 1969 Convention on Civil Liability for Oil Pollution Damage) for personal injury or property damage to the coastal state or its inhabitants caused by an act of or accident involving the vessel or aircraft while exercising the right of transit in the strait.

2) That we be authorized to support flag state responsibility to require that its flag vessels have insurance or other financial security to ensure their financial responsibility in accordance with generally accepted international standards.

We will consult in advance with U.S. industry and the maritime countries before taking a public stand on these questions.

As in pollution questions, we should also provide for quick release of non-military vessels under a bonding procedure.

iii) Coastal state liability

In addition to quick release and bonding requirements, other protection should be provided against possible arbitrary coastal state action. Consequently, we should propose, in conjunction with coastal state rights in straits, that the coastal state be liable for violations of the treaty, including unreasonable actions taken in implementation of its treaty rights.

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~~SECRET~~D. ARCHIPELAGOS

Archipelago claimants have become a complicating factor in the negotiations disproportionate to their number or world power base. They have formed a coalition with hardline straits states (although the issues are disparate) and have obtained support on an ideological basis from blocs such as the OAU, even though most of the supporters have no real parallel interests. The archipelago issue is interfering with progress in other areas of the negotiations to the extent that the other members of the Group of 5 are strongly urging us to take steps to resolve the issue. Efforts of members of that group have been less than helpful. The U.K. has tabled archipelago articles, and the USSR has made statements sympathetic to the claimants. We believe that our ability to prevent this issue from further disrupting our ability to achieve our overall objectives will be in large measure determined by the perception of archipelago supporters of the reasonableness of our efforts to reach an accommodation.

(1) The problem of an accommodation.

a. The claimants. Archipelago claims have been presented in the Seabeds Committee by Indonesia, the Philippines, Fiji, and Mauritius. The Bahamas and our own Trust Territory are also seeking archipelago status. The resource interests of these claimants could be effectively satisfied by whatever economic zone is finally developed by the Conference, and at least some of the claimants might be content with merely a resource regime. The Philippines and Indonesia, however, have a political interest in achieving recognition of a "concept," and both have perceived security interests in achieving control of navigation. They seek this control purportedly because of the threat of infiltration and subversion. Thus, any proposed solution must address these political and security considerations.

b. Risks. A major difficulty from the U.S. perspective is that any conceivable accommodation which would satisfy the major claimants would require us to relinquish the right of many high seas navigational and other uses. As a practical matter, this means that we would lose the right to conduct operations in the areas which would become archipelagic waters. This is not merely a loss of space to conduct training exercises. At best, it creates vast areas which would be "off limits" to us which would be available havens for submarines of

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the USSR or any other power which might clandestinely violate the treaty. A worse result is the potential for agreement between an archipelago state and a power unfriendly to us for the use of such waters for tactical or strategic purposes. In addition, we would almost certainly lose the right to conduct scientific research in archipelagic waters. Finally, efforts to negotiate on the issue carry some risk of rendering us vulnerable to weakening our juridical position on high seas and straits issues in general. Also, we should take care to insulate any discussion of the pollution regime in archipelagos from the general pollution negotiations.

(2) Possibilities for accommodation

If we can remove or minimize the exacerbation of the archipelago controversy from the negotiations, and at the same time advance our efforts towards achieving our straits and other navigational objectives, both for military and commercial vessels and aircraft, we can accept a certain amount of the risks involved. On balance, we believe it is in our interests to intensify our exploratory efforts to determine whether or not it is possible to reach a solution which will be acceptable to the claimants, while preserving a sufficient quantum of usage rights for military and commercial vessels (including tankers) and aircraft to meet our minimum requirements. We view Indonesia as the key to any possible solution, and would initially concentrate our efforts there. At the same time we recognize that no accommodation may be possible with the Philippines, regardless of the outcome of our efforts with Indonesia.

Recommendation

That the delegation intensify exploratory efforts to determine whether a solution embodying the following points is possible:

(1) An archipelago concept could be applied only by island states; not by states with both island and continental territory.

(2) Lines designed to delimit the area of "archipelagic waters" could be drawn from land point to land point. These lines may be called "archipelagic construction lines," or some term other than "baselines." Length of archipelagic construction lines may not exceed 90 (fallback to 120) miles.

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(3) All waters enclosed by archipelagic construction lines would be "archipelagic waters." These waters are not, nor are they analogous to, internal waters, territorial sea, or economic zone. They are sui generis--unique.

(4) The maximum permissible ratio of water to land is 5:1. Waters in bays, reefs, rivers, atolls would be counted as land for determining the ratio.

(5) The archipelagic state would have exclusive jurisdiction over activities within the archipelagic waters other than overflight and navigation (navigation includes vessel-source pollution).

(6) The territorial sea--outside archipelagic construction lines--would be measured only from land and any applicable baselines other than archipelagic construction lines.

(7) We would prefer that any coastal zone beyond the territorial sea (e.g., an economic zone) agreed to in the Treaty--outside archipelagic construction lines--be measured from the same land or baselines along it from which the territorial sea is measured. This may, however, cause a shelf boundary delimitation problem for Indonesia. Accordingly, we would accept measurement of the economic zone outward from the construction lines.

(8) The navigational and overflight right to be confirmed in this part of the LOS Treaty is the right to transit the archipelago. (A term different from that used in connection with straits would be used to avoid confusion between the two concepts--e.g., archipelagic passage).

(9) Transiting vessels and aircraft shall utilize a route through or over archipelagic waters which reasonably conforms to their destination outside the archipelago.

(10) Transit shall be accomplished without unreasonable delay. All vessels and aircraft in transit, however, may take such measures as are normal for their safety and self-defense.

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(11) While we would prefer the archipelagic transit right to apply to the entire transit, we could accept the treaty regime agreed for international straits for the straits portion of the transit provided that the regime shall apply whether the straits lead to high seas, territorial seas, or archipelagic waters.

(12) Vessels and aircraft entitled to sovereign immunity would be exempt from pollution standards and enforcement whether international or coastal. The archipelago state could not establish or enforce vessel construction standards. The archipelago state could establish and enforce discharge and dumping standards including international standards in archipelagic waters, provided discrimination between ships of different nationalities (including ships of the archipelago state), and standards that have the practical effect of denying passage, are prohibited.

(13) The obligations of the transiting vessels and aircraft, and the archipelagic state, are mutual and reciprocal. Whereas the vessels and aircraft will transit without unreasonable delay, so too the archipelagic state shall not hamper the passage.

(14) There will be no notification of transit.

(15) Any willingness on our part to reach and support this accommodation is contingent on receiving active support for our straits and other navigational objectives from Indonesia both before and during the LOS Conference. Our ultimate acceptance of the concept will, of course, be contingent upon the coming into force of a LOS Treaty acceptable to us.

(16) Our preferred position is that the passage or transit area should not be limited further than as specified in the foregoing points, and we will attempt to obtain that result. If, however, it is necessary to accept some type of additional restriction on the passage area to achieve an overall resolution of the archipelago issue, we could accept a passage area (which might ultimately be called a corridor if tactically advantageous) conforming to the sinuosity of the land areas, provided that the passage area is not restricted to less than 75% of the area between the nearest points of land, or 100 miles, whichever is lesser, of the

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waters between main islands; i.e., not drying rocks or shoals. Such transit areas must be constructed so as to include the maximum amount of navigable waters available, including all normal shipping channels. Transit-ing vessels and aircraft may depart from the passage area for the purpose of safety of life, self-defense, or as a result of force majeure, or in innocent passage as in the regime of the territorial sea.

(3) Position in event of failure of accommodation

A fair possibility exists that it may not be possible to reach an accommodation which will protect our minimum interests. If we should reach a point in our explorations where such an outcome becomes apparent, it will be necessary to adopt a different approach to protect our interests. We believe, nevertheless, that our exploratory efforts will have served a beneficial purpose in having demonstrated our reasonableness in seeking a solution, which we can cite as necessary in the negotiations.

Recommendation

Early in any exploratory discussions we will inform the archipelago claimant or claimants that a failure to reach a mutually satisfactory accommodation will require us to negotiate in the Conference in a manner designed to protect our own interests; i.e., to seek to have no archipelago concept at all in the Treaty, and in any event to refuse to accept any archipelago concept that is inimical to our navigation and security interests. We will make it clear that our offer is nor necessarily a continuing one. In the case of Indonesia, we may advise that the preservation of our juridical position may involve a reconsideration of the informal notification procedures which we have been following. Our position in the ensuing Conference will be to isolate the claimants and achieve a Treaty that is silent on the archipelago issue.

(4) Additional considerations

To the extent that acceptance of our offer of accommodation would create security or other practical problems for Indonesia, we intend to explore potential practical means for helping Indonesia to deal with those problems.

(5) The problem of cluster archipelagos

Our initial explorations will be limited to seeking accommodation with those states who qualify as a single-unit archipelago under the criteria set forth in this section. Should our efforts prove fruitful, and should it further appear that our overall interests (including the maintenance of a limited definition of archipelagic waters) would be

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furthered by agreeing to accept extension of the concept to archipelago claimants who would be divided into clusters by its application, we will study the possible effects on our interests and give a recommendation.

E. Coastal Resources and an Economic Zone

The large majority of coastal nations, including some developed coastal nations, favor broad coastal state economic jurisdiction over living and mineral resources beyond a 12-mile territorial sea, extending at least 200 miles from shore. The major issues are coastal state jurisdiction beyond 200 miles over continental margin seabed resources and coastal and anadromous fisheries, an exception for highly migratory species, limitations and standards governing the exercise of coastal state jurisdiction, including protection of non-resource uses, and compulsory dispute settlement procedures. We can support coastal state jurisdiction over resources in a 200-mile economic zone in the context of satisfactory resolution of these major issues and an overall satisfactory settlement.

A further issue of considerable importance concerns the rules applicable to delimitation of areas of coastal state jurisdiction between neighboring coastal states; this is a complex and contentious bilateral issue for many coastal states.

Moreover, although the issue arises largely in the context of delimitation between neighboring coastal states, questions have been raised as to whether small islands, particularly if uninhabited, should be entitled to the same broad economic jurisdiction (or even the same territorial sea) as other areas. In this regard, some African states have proposed excluding areas under foreign domination or control from economic zone provisions.

1. Seabed resources of the continental margin

There is virtually no opposition to the idea that coastal state jurisdiction over seabed resources of the continental margin should be exclusive. The U.S. has a direct interest in control of the seabed resources of its continental margins. While the USSR has proposed a limit of 100 miles from shore or 500 meters depth, whichever is further seaward, most countries, including landlocked and shelflocked, if their interests are accommodated, are prepared to support the idea that this jurisdiction should extend no less than 200 miles from shore.

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Many Latin American countries, particularly those on the east coast, as well as Canada, the UK, and New Zealand, believe coastal state jurisdiction should extend beyond 200 miles to the edge of the continental margin. Australia and the PRC also support this position, although at least with respect to the PRC, the problem probably is perceived essentially as one of bilateral delimitation with neighboring coastal states.

The African states do not support coastal state jurisdiction beyond 200 miles, although Nigeria and possibly others do not appear to have substantive objections to the idea. Japan takes the same position as the African states, largely because of bilateral delimitation problems with the PRC. The landlocked and shelflocked countries--many of which are African--tend to favor the African position.

The original U.S. proposal for a coastal state trusteeship zone specified a limit embracing the entire continental margin. Since then, we have stated we could also accept an alternative distance limit. Our new Coastal Seabed Economic Area proposal does not specify a limit, but in introducing the articles we noted that the majority favored at least 200 miles, and that a substantial number of states favored including the continental margin beyond 200 miles. We went on to urge an accommodation of the interests of those favoring broader jurisdiction for the seabeds by providing for the interests of others through such devices as revenue sharing. In essence, the U.S. posture was one of seeking to facilitate widespread agreement by accommodating the interests of both sides in the context of coastal state jurisdiction over the continental margin beyond 200 miles. We did not indicate a direct U.S. interest in the substance of the issue.

The following information on geographical areas has been compiled to assist in evaluating the positions that the U.S. should take on the outer boundaries of the Coastal Seabed Economic Area. Such alternatives assume at least a 200-mile limit alone or in combination with an additional fixed depth, whichever is further seaward.

Outer Limit	U.S. Sq. Miles	% U.S. gains going beyond 200 miles	U.S. absolute gain in square nautical miles
1. 200 mi.	2,222,000	--	--
2. 200 mi. +200 meters	2,224,500	0.1%	2,500
3. 200 mi. +2500 meters	2,279,500	2.6%	57,600
4. 200 mi. +4000 meters	2,608,500	7.4%	386,500*

*Two long 4000 meter ridges that extend across oceans would raise serious problems of deep seabed allocations: one from the Azores to Guyana and another from Mexico to the Antarctic via French Polynesia.

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<u>Outer Limits</u>	<u>U.S. % of area if limit adopted world- wide</u>	<u>Countries Involved</u>
1. 200 mi.	9.0%	--
2. 200 mi. +200 meters	8.8%	*
3. 200 mi. +2500 meters	6.5%	**
4. 200 mi. +4000 meters	5.0%	***

*Argentina, Canada, Australia, U.S. and USSR

**Argentina, Australia, Canada, U.S., USSR, Chile, Ecuador, Iceland, India, Ireland, Madagascar, Mauritius, Norway, New Zealand, Pakistan (?), South Africa, South West Africa and United Kingdom

***Argentina, Australia, Canada, U.S., USSR, Chile, Ecuador, Iceland, India, Ireland, Madagascar, Mauritius, Norway, New Zealand, Pakistan, South Africa, South West Africa, United Kingdom, Brazil, Costa Rica, El Salvador, France (Pacific), Guatemala, Indonesia, Mexico, Portugal, Peru, Sri Lanka and Tanzania

<u>Outer Limits</u>	<u>Distribution of U.S. areas beyond 200 miles</u>	
1. 200 mi.	--	--
2. 200 mi. +200 meters	Arctic Ocean	97%
	Bering Sea	3%
3. 200 mi. +2500 meters	Arctic Ocean	94.53%
	Bering Sea	4.25%
	Other	1.22%
4. 200 mi. +4000 meters	Arctic Ocean	53.69%
	Bering Sea	17.41%
	Gulf of Alaska****	8.90%
	Pacific Northwest****	19.02%
	Atlantic	.74%
	Gulf of Mexico	.02%

****Not highly prospective areas for hydrocarbons, since mostly volcanic.

To the extent the U.S. interest in the continental margin beyond 200 miles relates to Arctic areas off Alaska, it is unclear what the actual effect of any general limit (200 miles or any other) will be in the Arctic. The reason for this is that virtually all Arctic States (other than the U.S.) including the USSR and Canada, either have claimed or would like to claim all of the Arctic north of their coast to the North Pole under a "sector principle." This Arctic issue has not been raised in the LOS negotiations, and we strongly suspect that most Arctic States will not regard any general maritime limits in an LOS

Treaty--territorial sea or resource jurisdiction--as precluding a sector claim in the Arctic. Accordingly, most Arctic states are likely to oppose any express attempt--before or after a Treaty is negotiated--to regard any part of the Arctic seabed as international seabed area. The U.S. is opposed to the sector theory for navigational reasons, but could join other Arctic states in an interpretation that extends resource jurisdiction in the Arctic to the North Pole should the need arise; if this were done, it would eliminate the Arctic (where most possible U.S. areas with potential deep water hydrocarbons may lie) as an incentive to the U.S. seeking universal jurisdiction beyond 200 miles.

Most of the deep water portions of the world's continental margins have not been investigated in any detail. Consequently we have very limited knowledge of the mineral and hydrocarbon wealth of these areas. Although estimates of the recoverable hydrocarbon potential are very high, they are not precise and vary widely. Detailed political, technological, and economic factors relevant to a policy analysis of what is or is not in the overall interest of the U.S. for an outer boundary for seabed resources are also not known. We do know there is increasing commercial risk and an increase in cost of extraction as water depth increases which may be offset by technological improvements and the increasing economic gains of access to large hydrocarbon reserves.

In spite of the tentative nature of the data, preliminary estimates of the hydrocarbon potential and value for various limits for U.S. beyond 200 miles based on the information available at this time have been prepared. Since the U.S. continental margin is believed to be roughly representative of the world-wide configuration, it is assumed that the figures developed for the U.S. margin approximate the situation world-wide, although neither the margin nor the resource are evenly distributed among all coastal states.

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<u>Outer Limit of U.S. Margin</u>	<u>Estimate of Added Hydrocarbons</u>	<u>Estimate of Added Oil (Billions of Barrels)</u>	<u>Estimate of Added Gas (Trillion Cu. Ft.)</u>
1. 200 miles	--	--	--
2. 200 miles + 200 meters	0.2%	.5	2.0
3. 200 miles + 2500 meters	3.0%	11.0	52.0
4. 200 miles + 4000 meters	15.0%	55.0	250.0

Several comments are necessary on the 200 mile plus 4000 meter outer boundary. The bulk of potential hydrocarbon resources are believed to be in the deeper reaches of this area. However, all figures for this area are particularly rough because of the limited amount of data available. Secondly, volcanic areas aside, most possible U.S. areas between 2500 and 4000 meters that may have some hydrocarbon potential are located under thick ice in the Arctic, although a significant portion lies in the Bering Sea where year-round ice is not a problem. An Arctic Sector Theory would encompass this region for the U.S. and avoid the problem of possible claims to the immense 4000 meter ridges that run across the South Atlantic and South Pacific basins. Development of Arctic hydrocarbons also raises unique environmental and operating problems that suggest that it would require a huge discovery to overcome inherent impediments to exploitation.

Under existing law, coastal states have exclusive rights to seabed resources out to the 200-meter water depth and beyond that to adjacent areas that admit of exploitation. Most coastal states now want to establish a precise outer limit of 200 miles although a few influential broad shelf states want jurisdiction beyond 200 miles to the edge of the continental margin. Most landlocked and shelflocked states will probably recognize a 200-mile limit in the Treaty and probably coastal state control beyond if some revenue sharing provisions are included in the Treaty. The precise modalities of the accommodation would have to be worked out in the negotiation.

There are costs and benefits to the U.S. from international recognition in the Treaty of coastal state seabed resource jurisdiction beyond 200 miles. The basic cost to the U.S. will be the possible loss of access, or a sharp increase in the cost of access (since we have no control

of coastal state fees) to the potential continental margin hydrocarbon resources beyond 200 miles off other nations. We also have no control over concerted attempts by groups of other nations to cut production or use resources for political purposes. It is likely that U.S. companies with their technological lead in deep water hydrocarbon extraction would benefit the most from nondiscriminatory access to deep water areas which may not be as likely if the areas are under coastal state control rather than international control depending on the nature of the regime. We also run a greater risk of coastal state interference with scientific research, if coastal states control the continental margins beyond 200 miles.

The basic benefit to the U.S. from coastal state seabed resource jurisdiction beyond 200 miles is that the U.S. would acquire undisputed control over 5% of the world's continental margins if the outer limit were 4000 meters. We would not run the risk of dealing with a possibly unpredictable international arrangement and could deal with individual countries or groups of countries on a basis with which we have more experience. Also, we would be able to apply our own high environmental standards to a large area directly adjacent to the U.S. coast. Finally, it should be easier to achieve our objectives regarding ISRA if the deep seabed regime does not cover areas of hydrocarbon potential.

The above factors and various costs and benefits lead to several conclusions regarding the policies the U.S. should adopt on the outer limit of the Coastal Seabed Economic Area. First, the U.S. should not oppose coastal state jurisdiction beyond 200 miles. The practicalities of the negotiation are that an overall settlement will probably require an accommodation with the strongly-held position of other broad shelf states.

Second, even within 200 miles, the U.S. is not proposing coastal state jurisdiction without accommodation of the interests of landlocked, shelflocked, and other geographically disadvantaged states through revenue sharing, or without other international obligations of the coastal state. Consistent with this position, we believe the U.S. should not support coastal state jurisdiction over the continental margin beyond 200 miles unless it is subject to at least the same treaty limitations that apply within 200 miles.

The question, therefore, is the degree of coastal state control over continental margin resources beyond 200 miles. The balance of our economic interests on this matter is not completely clear. We would like the resources to be available to U.S. producing interests and consumers. However,

the effect of exclusive coastal state jurisdiction off our own coast is to prevent access for our companies off foreign coasts without foreign state consent. A uniform 200-mile limit would cover over one-third of the world's ocean floor and while the U.S. gets more area with 200 miles than any other state, beyond 200 miles a number of states have considerably broader and shallower continental margins off their coasts than we do.

Australian and Canadian representatives urged us in December to avoid taking a position on this issue, while relying on our global interests in widespread agreement as the basis for encouraging a "favorable" compromise. Tactically, the issue is a delicate one. Under certain circumstances discussion of U.S. substantive interests in jurisdiction over the margin beyond 200 miles could stimulate support for limiting jurisdiction to 200 miles. Accordingly, while negotiating privately on the issue, we believe we should generally indicate our interest in seeing relevant interests accommodated (playing an honest broker role) and should not (except as directed by the Chairman of the Delegation in consultation with the Chairman of the Task Force and senior representatives of the agencies concerned) discuss the U.S. interest in its continental margin beyond 200 miles with the public or foreign representatives. We will simultaneously explain privately to interested members of Congress why evidence of domestic insistence on the issue could be counter-productive.

Pending resolution of the issue, we will not take any position inconsistent with the adoption of an Arctic Sector resource solution to protect our potential interest in acquiring control over Arctic continental margin regions beyond 200 miles with hydrocarbon possibilities.

As indicated in earlier instructions, a precise limit of coastal state jurisdiction over the continental margin beyond 200 miles will have to be established to define any such jurisdiction. The U.S. proposal to use a gradient figure was widely regarded as too complex. While not entirely accurate in a geological sense, a depth-of-water figure is likely to be the simplest to negotiate and to find. The NSC Interagency Task Force will study this issue with a view to arriving before Caracas at a precise limit that maximizes the hydrocarbon and mineral resource potential off our coast without extending unreasonably far elsewhere.

RECOMMENDATION

(1) The U.S. delegation should not oppose proponents of a 200 mile limit, proponents of a margin limit beyond 200 miles or proponents of an intermediate zone beyond 200 miles, but should seek to establish a tactical role of honest broker on the issue.

(2) The US delegation should take no position inconsis-

tent with coastal state jurisdiction over Arctic seabed resources extending to the North Pole under a sector approach limited to resource jurisdiction.

(3) Precise figures for defining any continental margin limits beyond 200 miles will be developed before Caracas.

With respect to the substance of coastal state seabed jurisdiction beyond the territorial sea, our view is that the coastal state rights under the Treaty should be limited to exclusive jurisdiction over exploration and exploitation of seabed resources, deep drilling for any purpose, and off-shore installations affecting its economic interests (e.g., superports). Other activities would be governed by high seas principles. Scientific research is specifically dealt with later in the paper.

The international limitations on coastal state behavior that we have proposed in our Coastal Seabed Economic Area Articles would continue to be supported, as would compulsory dispute settlement:

(1) In order to assure an adequate accommodation of uses, and to prevent resource jurisdiction being used as a basis for unjustifiably interfering with navigation and other uses, the coastal states would be obliged to prevent unjustifiable interference with other uses, and to ensure compliance with specific international standards in this regard (e.g., regarding maritime safety standards and the breadth of safety zones). Conversely, other uses would have to be conducted in accordance with a general obligation of reasonable regard for coastal state rights under the Treaty. For example, other users would have to respect the safety zones around installations established under the Treaty.

(2) The coastal state would ensure compliance with international standards, and could apply higher standards to prevent pollution from resource activities, drilling and installations over which it has exclusive rights under the Treaty.

(3) The coastal state would be obliged to protect the integrity of foreign resource investment.

While the relative difficulty of achieving agreement on each of these points varies, we believe the chances of achieving agreement on the first substantive point are good. The practical value of any of these measures depends largely on agreement on compulsory dispute settlement.

Revenue sharing aside, which is discussed below, we believe the U.S. interests are best served, and the negotiations simplified, if the standards apply seaward from the territorial sea and we will seek that result. Nevertheless, we believe that with respect to the second and third limitations above, if necessary to achieve agreement on the standards, the Delegation should continue to have flexibility on the issue of whether these limitations are applicable seaward from the 12-mile limit of the territorial sea, or only seaward of the 200-meter depth curve where it is beyond 12 miles.

We have reached the conclusion that the rate of revenue sharing by coastal states in the area of coastal state resource jurisdiction should be uniform for all states and probably should be computed in the Treaty as a fixed percentage of the value of production at the wellhead in order to simplify its application under different economic systems. In this regard, there are five interrelated variables which determine the absolute amount of revenue and the relative shares among coastal states. The variables are: (1) the output potential of the revenue sharing area; (2) the revenue sharing rate; (3) the rate of hydrocarbon production; (4) the timing of production; and (5) the relative distribution of resources with respect to distance/depth and distribution of resources among coastal states. We believe the coastal state should be responsible for collecting and transferring any revenues. (For a discussion of the allocation of revenues, see page 112 under section H.) Specific ranges are being developed now on the basis of the criteria specified in NSDM 62:

"...a level that will make a substantial contribution to development, render participation in the Treaty attractive to the necessary signatories, and at the same time encourage exploration and exploitation of the seabeds."

It should be noted that the attitudes of the coastal state majority, as well as that of the landlocked and shelflocked minority, are relevant to the second criterion.

There is disagreement about revenue sharing. Accordingly, three options are presented. In general terms they are: (1) no revenue sharing; (2) revenue sharing up to 1% starting at 12 miles; (3) revenue sharing up to 5% starting at 12 miles or 200 meters (or functional equivalent) whichever is greater. These options are followed by an additional option, consistent with options 2 and 3 above, for revenue sharing beyond 200 miles at a higher rate than landward of 200 miles.

Option 1. The U.S. should withdraw its present support for revenue sharing with respect to any area of coastal state seabed jurisdiction.

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(1) Revenue sharing, even at modest rates, involves large sums that would increase through time. There would be an undesirable drain on tax revenues and an adverse effect on the U.S. balance of payments position.

(2) Any form of revenue sharing will face the problem of verifying that a coastal state has actually complied with its royalty payment obligations. There will be temptations to cheat on a common definition of the term "value of production," and the U.S. could well be left paying more than its fair share of the coastal states' obligations.

(3) The financial burden of revenue sharing will be an additional disincentive for exploitation of critically needed hydrocarbons and other minerals.

(4) There have been few specific reactions to the revenue sharing proposals that the U.S. has advanced. Hence, it is a propitious time to abandon this policy.

(5) Revenue sharing has not proved to be an effective "bargaining chip" in the negotiations. In fact, revenue sharing may be opposed by a significant number of developing coastal states and thus our revenue sharing proposals may not only fail to gain us support but may make it more difficult to obtain other substantive objectives.

(6) Some members of Congress have expressed reservations about revenue sharing.

(7) Revenue sharing, if based on royalties, would raise the prices of petroleum products and reduce output. As the chief consumer of fuels, the United States would be the principal country hurt by this but all nations would be affected.

(8) Revenue sharing's greatest financial burden in the short term would fall on the U.S. given our plans to rapidly develop our OCS hydrocarbon reserves (part of Project Independence) and the growing technological capability of U.S. firms to develop distant continental margin areas.

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(1) Revenue sharing has been part of the U.S. ocean's policy since the President's announcement in May, 1970. Resolutions that have overwhelmingly passed in both the Senate and House endorsing the President's ocean policy have specifically endorsed revenue sharing. Private groups and prominent newspapers have made similar endorsements. To withdraw support for revenue sharing now would impair our domestic credibility and undermine the broad support we have been given.

(2) Since 1970, the U.S. has vigorously advocated in the international negotiations the need for an early Conference. Most developing countries have come to believe that the U.S. seriously and sincerely desires to accommodate both their interests and our own in a new stable agreement on the oceans. Abandonment of revenue sharing could subject the U.S. to the charge that we misled developing countries into supporting the need for a Conference helpful only to our navigational interests when we did not, in fact, intend to negotiate a settlement that would take their interests equitably into account. It would also cast doubt on the seriousness of all other U.S. proposals made in the LOS negotiations, particularly various offers of cooperation and assistance, and make the achievement of our basic objectives much more difficult.

(3) There is little risk that revenue sharing sums will be excessive. The amount of revenue that would be available is dependent upon many factors such as the method of computation, area involved, and the rate of sharing. There is every indication in the negotiations that the large majority of states are not eager to commit substantial funds.

(4) The withdrawal of our revenue sharing proposal might be misunderstood at home and abroad as a gesture to the petroleum companies. In view of our difficulties on the problem of oil prices and profits, this is a particularly bad time to run such a risk.

(5) There is no evidence that revenue sharing would deter development, particularly in the light of sharply increased prices. Costs might be passed along to the consumer or to the general taxpayer in the case of tax credits.

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(6) Revenue sharing is virtually the only benefit that can be offered to the many states that have little or nothing to gain by expansion of coastal state jurisdiction over seabed minerals. These states constitute a blocking third at the Conference and their interests must be accommodated if we are to achieve an overall settlement that protects U.S. non-resource as well as U.S. resource interests.

(7) Revenue sharing obligations would apply to all coastal states at the same rate. Accordingly, the U.S. share must be considered in light of that of other states, and the resulting relative diminution of the need for direct foreign economic assistance to developing countries. Foreign states are likely to have about 85% of the total world petroleum from which revenues would have to be shared.

(8) The U.S. is seeking recognition and confirmation in international law for broad coastal state jurisdiction over seabed minerals. Achievement of this objective while protecting our navigational and other non-resource interests would be welcomed by the Congress. A variety of acceptable means are available to deal with the transfer of revenue sharing funds issue.

(9) To withdraw our support for revenue sharing would jeopardize our efforts to gain support for the President's Five Conditions on the continental margin. By eliminating one, we would encourage the elimination of all and this would run the real risk that economic jurisdiction would evolve into a zone undistinguishable from a 200-mile territorial sea with serious consequences for our navigational interests.

(10) Our credibility in international negotiations generally would be hurt.

(11) We would eliminate one of the principal inducements for other countries to sign the LOS Convention.

(12) It is economically inconsistent to make the unqualified claim that revenue sharing will be both a disincentive for exploitation and that revenue sharing will cause higher prices.

(13) Revenue sharing based on the value of hydrocarbon production will not necessarily raise prices and it will not cause a reduction in existing output levels. In theory, a royalty

could slow the rate of output growth; however, in practice, firms may not be deterred by revenue sharing which raises their total cost by an extremely small proportion.

Option 2. The U.S. Delegation should be authorized to support revenue sharing from seabed minerals production seaward of a 12-mile territorial sea if the Persian Gulf and North Sea are included. The precise rate that is acceptable would be determined on the basis of the criteria specified in NSDM-62 in full consultation with the Agencies concerned. In no event would the revenue rate exceed 1% of the value of the hydrocarbons extracted from the area.

Pros

(1) While it is likely that revenue sharing is more easily negotiated if shallow areas close to the coast are excluded, there is no reason for the U.S. to take the blame for insisting on that result.

(2) Major oil exploitation off the coast of other countries is in areas like the Persian Gulf and the North Sea that are at less than 200-meters depth. Inclusion of revenues from the areas is likely to significantly increase the total, and is likely to increase the pressure for lower rates of revenue sharing.

(3) The total financial cost depends on the rate of revenue sharing: a lower rate for a larger area could be less costly than a higher rate for a smaller area.

(4) Since deep water technology is likely to be used off the U.S. first, at the initial stages the U.S. might pay a relatively higher proportion of the total if revenue sharing does not include significant shallow areas.

(5) Since the U.S. has only about 8% of the world's continental margins, over the long run the U.S. percentage of funds available to international development efforts arising from revenue sharing is likely to be relatively low and, accordingly, we have an interest in maximizing the revenue base.

(6) The ability to present this Option has major negotiating advantages in reaching a satisfactory overall settlement in both non-resource and resource issues. The good-will votes of the geographically disadvantaged states are essential for achievement of our non-resource objectives and our straits position in particular.

(7) Application of revenue sharing seaward of a 12-mile limit increases the likelihood that the US will be able to achieve agreement on application of substantial international standards to protect our navigation and other nonresource interests seaward of 12 miles.

(8) The Delegation should have the flexibility to present a reasonably forthcoming approach on this issue in order to ensure that we have the latitude to achieve our overall objectives at the Conference.

(9) A larger revenue sharing area, without a national tax credit arrangement, allows for a lower revenue sharing rate, which in turn is less distortionary in terms of investment and production decisions.

Cons

(1) Revenue sharing is designed in part as a device for accommodating legal differences on the extent of coastal state jurisdiction beyond 200 meters. A 12-mile inner boundary does not contribute to resolution of that issue.

(2) Because coastal states clearly have undisputed existing vested rights within 200 meters, domestic and international opposition to revenue sharing starting at 12 miles is likely to be considerably greater.

(3) While it is true that the U.S. has only about 8% of the world's continental margin, there is likely to be more production sooner off the U.S. and thus the actual U.S. contribution (given a set rate) for some time is likely to be higher than our total resource share.

(4) The U.K., which is our closest supporter on these issues, is strongly opposed to revenue sharing landward of 200 meters. We might also run some risk of Arab opposition.

(5) It is estimated that 90% of the recoverable hydrocarbon potential in the U.S. continental margin is located seaward of 12 miles. Extension of revenue sharing to this area even at a lower rate could substantially increase the U.S. obligation.

Option 3. The U.S. Delegation should continue to be authorized to support revenue sharing from seabeds mineral production seaward of the territorial sea or the 200 meter depth curve (or a functional equivalent), whichever is further seaward. The precise rate that is acceptable would be determined on the basis of the criteria specified in NSDM-62 in full consultation with the

Agencies concerned, and would in no event exceed 5% of the value of the hydrocarbons extracted from the area. (As a tactical matter, the U.S. would not indicate that the reason for excluding large areas close to shore relates to its own interests, but rather explain this in terms of negotiability with the majority of coastal states.)

Pros

1) All current U.S. production is from areas landward of the 200-meter depth curve, and most substantial production in the near-term would be from such areas. Exclusion of these areas accordingly will significantly reduce the size of our obligations, and defer the timing of its payments, irrespective of the applicable rates within any likely range.

2) Revenue sharing is designed in part as a device for accommodating legal differences on the extent of coastal state jurisdiction beyond 200 meters. There is no doubt as to existing jurisdiction within 200 meters.

3) Because coastal states clearly have undisputed existing vested rights within 200 meters, domestic and international opposition to revenue sharing from that area is likely to be considerably greater.

4) The U.K., which is our closest supporter on these issues, is strongly opposed to revenue sharing landward of 200 meters. We should also not run a risk of opposition from Persian Gulf and other Arab States in the negotiation.

5) The economic review revealed that approximately half of the recoverable hydrocarbon potential on the U.S. continental margin is located landward of 200 meters. In the absence of significant differences in revenue sharing rates, exclusion of revenue sharing in the area landward of 200 meters would substantially reduce the US obligation.

6) The ability to present this Option has major negotiating advantages in reaching a satisfactory overall settlement on both non-resource and resource issues. The good will and votes of the geographically disadvantaged states are essential for achievement of our straits position in particular.

7) The Delegation should have the flexibility to present a saleable and reasonably forthcoming approach on this issue in order to ensure that we have the latitude to achieve our overall objectives at the Conference.

Cons

1) While it is likely that revenue sharing is more easily negotiated if shallow areas close to the coast are excluded, there is no reason for the U.S. to take the blame for insisting on that result.

2, Major oil exploitation off the coast of other countries is in areas like the Persian Gulf and the North Sea that are at less than 200-meters depth. Inclusion of revenues from the areas is likely to significantly increase the total, and is likely to increase the pressure for lower rates of revenue sharing.

3) The total financial cost depends on the rate of revenue sharing: a lower rate for a larger area could be less costly than a higher rate for a smaller area.

4) Since deep water technology is likely to be used off the U.S. first, at the initial stages the U.S. might pay a relatively higher proportion of the total if revenue sharing only begins at a depth beyond 200 meters than would be the case if significant shallow areas are included.

5) Since the U.S. has only about 8% of the world's continental margins, over the long run the U.S. percentage of funds available for international development efforts arising from revenue sharing is likely to be relatively low and, accordingly, we have an interest in maximizing the revenue base.

Additional Option. The U.S. Delegation should be authorized to support a greater rate of revenue sharing for seabed areas under coastal state control beyond 200 miles than those landward of 200 miles. While the U.S. Delegation would be authorized to support the above proposal in principle, there would be no position taken on specific proposals or rates of revenue sharing for areas beyond 200 miles until the Chairman of Delegation had consulted with the Chairman of the Task Force and senior representatives of the agencies concerned. Specific ranges are presently being studied.

Pros

1) There is a substantial likelihood that the differing views in the negotiations on whether coastal state control over seabed resources should extend beyond 200 miles can only be reconciled by accepting greater revenue sharing with the international community beyond 200 miles than landward of 200 miles in exchange for recognition of coastal state resource jurisdiction beyond 200 miles.

2) There is no evidence that higher revenue sharing from the area beyond 200 miles would deter development as such costs might be passed along to the consumer or to the general taxpayer in the case of tax credits.

3) The great majority of states do not gain substantially by extending seabed resource jurisdiction beyond 200 miles. For the few that do, however, recognition of their control over such resources is essential for agreement to the Treaty. Hence the U.S. Delegation needs the flexibility to find a reasonable solution that will not be opposed by the great majority of the states and yet will protect our broad shelf interests.

4) The U.S. is seeking recognition and confirmation in international law for broad coastal state jurisdiction over seabed minerals. Achievement of this objective while protecting our navigational and other non-resource interests would be welcomed by the Congress. A variety of acceptable means are available to deal with the transfer of the revenue sharing fund issue. The U.S. contribution must be considered in light of that made by other States and the resulting relative diminution of the need for direct foreign economic assistance to developing countries.

5) It is possible that the ability to accept a higher rate of revenue sharing beyond 200 miles will considerably help reduce the pressure for an unacceptably high rate for the seabed area landward of 200 miles.

6) Since the U.S. percentage of seabed area beyond 200 miles decreases with increases in uniform depths world-wide, the U.S. loses less relatively by accepting a higher revenue sharing rate for such areas than it would if the rate were the same within and beyond 200 miles.

7) Since the U.S. has only about 8% of the world's continental margins, over the long run the U.S. percentage of funds available for international development efforts arising from revenue sharing is likely to be relatively low and, accordingly, we have an interest in maximizing the revenue base.

Cons

1) Revenue sharing, even at modest rates, involves large sums that would increase through time. There would be an undesirable drain on tax revenues and an adverse effect on the U.S. balance of payments position.

2) Any form of revenue sharing will face the problem of verifying that a coastal state has actually complied with its royalty payment obligations. There will be temptations to cheat on a common definition of the term "value of production," and the U.S. could well be left paying more than its fair share of the coastal states' common heritage obligations.

3) The financial burden of revenue sharing will be an additional disincentive for exploitation of critically needed hydrocarbons and other minerals.

4) There have been few specific reactions to the revenue sharing proposals that the U.S. has advanced. Hence, it is a propitious time to abandon this policy.

5) Some Members of Congress have expressed reservations about revenue sharing.

6) Revenue sharing, if based on royalties, would raise the prices of petroleum products and reduce output. As the chief consumer of fuels, the United States would be the principal country hurt by this but all nations would be affected.

7) Revenue sharing's greatest financial burden in the short term would fall on the U.S. given our plans to rapidly develop our OCS hydrocarbon reserves (part of Project Independence) and the growing technological capability of U.S. firms to develop distant continental margin areas.

8) While it is true that the U.S. has only about 8% of the world's continental margins, there is likely to be more production sooner off the U.S. and thus the actual U.S. contribution (given a set rate) for some time is likely to be higher than our total resource share.

Estimates of revenue sharing

The following is one possible calculation for the annual payment of revenues to the international community from hydrocarbon resources recovered from the U.S. continental margin. It should be stressed that this is only one possible approach and that the figures in the table are only illustrative. This approach follows the depletion rate assumption used in the Economic Review.

Estimating the magnitude of revenues that will be paid by producers of deep seabed minerals is a difficult task. Ideally, one would calculate the present value of the net revenue (total revenue minus total cost) stream that is expected from all the world's margins. However, in doing such a calculation it is necessary to predict future demand, future technology and costs of production, substitute sources of supply, and the magnitude of the potential reserves.

Some of the basic information has been collected and is contained in two reports by the U.S. Geologic Survey (October 10, 1973 and January 3, 1974). Presented there are estimates of the "potential recoverable petroleum resources of the U.S. continental margins." These are not estimates of the total resources in place. Instead, they are recoverable resources estimated at 25 percent and 50 percent respectively of the total oil and natural gas resources. The implication is that given prices similar to those prevailing now, then these magnitudes are the ones expected to be recovered over the lifetimes of all the fields in the U.S. margins. Such an estimate has to be converted, of course, into some typical annual estimate. Again difficulties arise since the area in question contains several fields and output in each field varies over time. One very uncomplicated way of getting at a typical annual output estimate is to divide the total recoverable resources by some number of years to approximate the annual rate. The number used in this calculation assumes a depletion of half the resources in 20 years. It should be noted that new U.S. Geologic Survey estimates of potential recoverable petroleum resources of the margin landward of 200 meters indicate that the resources may be only 1/3 to 2/3 as large as the estimates used in the calculations. Thus, the figures in the "One Percent Royalty" table may be significantly overstated.

The estimates in the following table apply to the area beyond 12 miles or 200 meters depth, whichever is farther seaward.

FIVE PERCENT ROYALTY

	<u>to 2500 meters depth</u>	<u>to 4000 meters depth</u>
\$10 per bbl & \$.65 per 1000 cu. ft.	\$2.65 billion per yr.	\$3.52 billion per yr.
\$6 per bbl & \$.55 per 1000 cu. ft.	\$1.75 billion per yr.	\$2.32 billion per yr.

Of interest as well, are approximations of the annual payments to the international community from the United States when the inner boundary of the CSEA is simply 12 miles. Using similar assumptions, the results are:

ONE PERCENT ROYALTY

	<u>to 2500 meters depth</u>	<u>to 4000 meters depth</u>
\$10 per bbl & \$.65 per 1000 cu. ft.	\$1.01 billion per yr.	\$1.19 billion per yr.
\$6 per bbl & \$.55 per 1000 cu. ft.	\$.78 billion per yr.	\$.67 billion per yr.

2. Delimitation and Island Problems

As indicated, the problems of establishing boundaries between areas under the jurisdiction of neighboring coastal states, including the related islands problem, are highly complex and divisive. They concern not only seabeds resources but fisheries. On the one hand, it would be desirable to achieve agreement on the legal principles governing delimitation, and even more so on procedures for peacefully resolving delimitation disputes, since this is a major area of potential uncertainty and conflict over rights in the oceans. Such disputes present political problems for the U.S., particularly when friendly states are involved. Moreover, exploration and exploitation are usually delayed in disputed areas, thus conflicting with our goal of increasing global production. On the other hand, the differences on the issues are essentially bilateral in character, would not in fact be resolved definitively by an LOS treaty, and are likely to complicate the negotiations seriously.

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If the issue is dealt with in detail, we like any other coastal state would be compelled to seek a result that favors our position vis-à-vis our neighbors; this would result in direct conflict with Canada and potentially with the USSR, Mexico, Cuba, and the Bahamas.

In this situation, while trying to ensure that our substantive interests in the issue are not prejudiced and making a strong attempt to provide procedures -- perhaps regional in character -- to deal with future boundary conflicts, our efforts should be directed toward preventing the issue from disrupting the Conference. As a matter of substance, a general reference to resolution of the issue in accordance with international law may well be the best result.

At the same time, we are preparing specific analyses of U.S. interests in order to deal with the contingency of a specific negotiation on the issue. The results of these more technical studies will be employed in a manner consistent with our overall policy posture on individual issues.

The additional question of whether small isolated islands should be entitled to full economic jurisdiction at the expense of the high seas and the international seabed area -- where no neighboring coastal state is involved -- is likely to be resolved in favor of such jurisdiction. States with such islands -- France, the UK, Brazil and Chile to name just a few -- are likely to press harder than the opposition, which would be protecting a community rather than individual interest. We should be aware that the effect will be to increase the importance of many isolated islands and rocks in the Pacific and Indian Ocean in particular, and that existing sovereignty disputes are likely to get worse and new ones are likely to emerge. (The recent problems in the South China Sea are an example.) The U.S. stands to gain from jurisdiction off its own islands.

Accordingly, we should not oppose the French and British on the issue, but, unless they ask for our help, we should remain essentially silent rather than further risk identifying the islands issues with big power ambitions or involve ourselves directly or indirectly in the PRC's disputes with her neighbors on these issues.

3. Fisheries

The issue of coastal state fisheries jurisdiction has been of more interest to more states in the negotiation than any other. It also commands considerable domestic political attention.

As stated in earlier instructions, our specific fisheries

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objectives are to seek international acceptance of U.S. fisheries positions that (1) give the coastal state effective regulatory and economic control over coastal and anadromous species throughout their migratory range on the high seas, subject to international standards and review regarding, inter alia, conservation and utilization of coastal and anadromous fisheries, and (2) provide for international regulation of highly migratory species. Our delegation has been authorized to adopt such tactics as will best promote achievement of these objectives. Specifically, in view of the broad developing country support for fisheries jurisdiction as part of a 200-mile economic zone, we have been authorized to indicate privately our willingness to support a possible fisheries compromise based on a fixed zonal approach. We have begun the process, and we propose further to seek achievement of our fisheries objectives through accommodation within the framework of a 200-mile economic zone.

The thrust of our efforts should be to promote a widespread settlement that meets our objectives. Accordingly, we will seek such an accommodation which ensures special treatment for anadromous and highly migratory species; which places on coastal states or the managing authority international obligations to conserve the stocks and to ensure their optimum utilization; and which includes provisions regarding traditional fishing, coastal state enforcement rights and the applicability of dispute settlement. We will also attempt to obtain some control and preferential rights over coastal species beyond 200 miles, if possible. Any decision to publicly support a 200-mile zone will be made by the Chairman of the Delegation in consultation with the Chairman of the Task Force and the senior representatives of the agencies concerned. Consultations with key states and U.S. industry representatives will be maintained.

a) Coastal and anadromous species

Over 80% of the total U.S. fish landings are coastal stocks, and we, along with the majority of nations in the Conference, have a substantial interest in coastal species. Coastal state control or preferential rights over coastal and anadromous stocks beyond a 200-mile limit is not incompatible with a 200-mile zone. To the contrary, African, Asian, and other supporters of a 200-mile zone have proposed this result for coastal species, and have left room for special treatment of anadromous species. The basic U.S. problem beyond 200 miles relates to anadromous species (salmon) rather than coastal species. In terms of our interests, a 200-mile zone without control over coastal species beyond 200 miles would be acceptable, provided we have control over salmon beyond 200 miles or achieve the practical equivalent, such as a total ban on fishing for anadromous species outside a 200-mile zone. Accordingly, in the context of a 200-mile zone, the U.S. should support coastal state control or preferential rights over both coastal and anadromous species that migrate beyond the zone. However, in doing so, we should recognize that our major problem is salmon, and it should be the major thrust of our

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efforts.*

(1) Conservation and Utilization

Under our approach the managing authority would set an allowable catch applicable to all fishing activities for a particular species (i.e., for coastal and anadromous species applicable to both coastal state and foreign fishing activities.) Our standard for defining allowable catch is intended to achieve three major objectives: (1) obtaining maximum long-term benefits from the ocean's living resources, (2) providing U.S. flexibility to manage our coastal and anadromous fisheries in light of our own environmental economic needs, and (3) ensuring meaningful conservation and environmental protection worldwide.

In order to achieve these objectives, the allowable catch should be designed by the management authority to make possible achievement of the maximum sustainable yield over time, consistent with certain qualifications. Measures taken to maintain or restore the maximum sustainable yield must be based on the best scientific evidence available. Moreover, the management authority shall consider environmental and economic factors in determining allowable catch. Consideration of such factors can provide flexibility in the long run only to set allowable catch below maximum sustainable yield, although short-term harvesting above maximum sustainable yield would be allowable under certain circumstances. Under this approach, the managing authority

*It should be noted that earlier instructions have indicated that sedentary species of fish (e.g., King Crab) would be subject to coastal state control. They could be treated either as seabed resources in the coastal seabed economic area, or as non-migratory fisheries or a separate category under the U.S. fisheries proposal (NSDM 157).

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has flexibility in its management activities, and the allowable catch can and should be set in light of the interrelationships among species so as not to reduce populations of associated or dependent species to an extent inconsistent with the health and stability of the fishery resource and the entire marine environment.

Within these parameters, our proposal requires a coastal state to permit foreign fishing to the extent that it is not currently achieving optimum utilization (i.e., to the extent it is not taking the allowable catch). The optimum utilization question is a contentious issue, due to its direct relation to the problem of access by foreign states. In addition to our concern for promoting maximum availability of global fish protein sources, and preserving a basis for U.S. access to coastal species off foreign coasts, we are seeking this obligation because we do not believe the USSR and Japan will accept expanded coastal state jurisdiction without some kind of assured access. In this context, it should be noted that the basic U.S. position in the LOS negotiations is that a Treaty is meaningless without participation of the major maritime powers.

Moreover, in practice we would have difficulty imposing a regime without damaging other interests. If the USSR and Japan are not satisfied with treaty provisions on ac-

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cess, it is our assessment that they may well--as Japan did in the case of king crab--seek bilateral guarantees at the highest level from the U.S. and possibly from Canada to protect their fisheries off New England and Alaska. The pressure from such guarantees could be substantial. Our proposal for access based on optimum utilization, coupled with our proposal for accommodation of traditional fishing within this scheme, provides a basis upon which we can point out to the USSR and Japan that their access will be substantially protected under the Treaty.

For all of the reasons cited above, we recommend continued U.S. support of the optimum utilization obligation as we have defined it.

(2) Management of coastal and anadromous species

In arguing against the optimum utilization obligation, supporters of an exclusive economic zone, state, among other considerations, that it is not needed because it is in the interest of coastal states to maximize their economic return by negotiating for or licensing foreign access off their coasts. In essence (conservation aside), with respect to foreign access we believe this reflects a desire to treat fisheries much as mineral resources are treated: the coastal state would negotiate a joint venture or other arrangement, or would issue licenses. Presumably, the coastal states would wish to get as much as the market would bear.

Economic flexibility, such as that provided by licensing or joint ventures, is not incompatible with the obligation to fully utilize the stocks up to the allowable catch. In fact, the existence of an economic incentive will tend to promote coastal state interest in ensuring optimum utilization. However, our current fisheries articles place certain limitations on coastal state discretion in these respects. The question, then, is whether in addition to providing that the coastal state ensure optimum utilization, the Treaty should limit the discretion of the coastal state in how it permits foreign fishing. Elements such as the following must be considered: whether the coastal state should have authority to ask as much as it likes for licenses fees; whether the Treaty should provide for joint ventures; and how the accommodation for traditional fishing should be addressed within this framework.

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(i) License Fees

The U.S. articles allow coastal states to establish reasonable conditions for foreign access to coastal and anadromous stocks, but they limit fees to the cost of defraying management expenses. However, as indicated above, allowing the coastal state more of an economic incentive would not be incompatible with our interest in ensuring optimum utilization. Furthermore, there are other benefits from a more flexible licensing scheme, such as the question of revenues for the U.S. from the large, valuable fish stocks off our coast, and the tendency to promote economic efficiency by rewarding those able to pay the highest fees. Distant water fishermen such as our own shrimp fishermen and the USSR and Japan, of course, would not like this idea. On the other hand, some countries such as Japan have experience with such systems, and we will continue to consult with our own shrimp fishermen in this regard. Our recommendation on joint ventures (discussed below) would seem to offer the shrimp fishermen some protection. Moreover, based on existing proposals it seems likely that the Treaty will endorse special provisions for access by neighboring states, particularly geographically disadvantaged states. This could be of some help in protecting our shrimp interests off Mexico. However, a number of proposals limit the obligation to neighboring developing countries; whether the U.S. should accept it in that form would largely depend on other provisions regarding access.

Recommendation

Assuming an obligation to permit foreign fishing to the extent stocks are not utilized up to the allowable catch by coastal state fishermen, the U.S. Delegation is authorized to accept a coastal state right to license foreign fishing for stocks under its jurisdiction subject only to a general limitation that the conditions of the license be reasonable and non-discriminatory as among foreign fishermen, and without any other limitation on the fees (e.g., fees could be fixed or subject to competitive bidding by the coastal state).

This recommendation does not necessarily apply to traditional fishing rights; the matter is discussed below.

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(ii) Joint ventures

It is likely that many developing countries will not regard license fees as a complete solution to their objections to an optimum utilization obligation. Many would like to enter into joint ventures that stimulate local participation and development. The existing U.S. articles are silent on this subject. The effect is that joint ventures operating under a coastal state flag would qualify for a coastal state guaranteed preferential share, while joint ventures employing foreign flag vessels probably would not. In essence this requires U.S. distant water fishermen to make a complete conversion to coastal state flag and control in order to gain the political and economic benefits of joint ventures, as well as preferential rights. This seriously complicates the establishment of joint ventures because of (a) restrictions on fish landings by foreign vessels in a number of consuming countries, including the U.S.; (b) fears of nationalization or unpredictable regulation; (c) the requirement by many states that their nationals be employed on board their flag vessels; and (d) restrictions on conversion to foreign flag in some countries, including the U.S.

On the other hand, the current U.S. proposal does not preclude a competitive race among distant-water fishermen to get into preferred positions by establishing subsidiaries or joint ventures in coastal states. (Japan and the USSR as well as several other developed and developing states have already begun this, presumably as a hedge against expanded fisheries jurisdiction.)

Accordingly, we believe the U.S. should, at the appropriate time, and if consistent with the overall fisheries settlement, indicate that it is prepared to regard joint ventures in coastal state fisheries as entitled to preferential rights irrespective of the flag of the vessel. Some definition of a joint venture may be necessary in this context.

(iii) Traditional fishing

One of the most difficult negotiating problems regarding our utilization concept relates to the effect on traditional distant-water fishing as coastal state harvesting

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capacity increases. Where the stock is not being fully utilized to the level of the allowable catch by all fishermen, our optimum utilization proposal meets the need for access. However, in most major fishing grounds, stocks are being utilized up to the allowable catch, and an expansion of the guaranteed share of the coastal state based on its harvesting capacity would require reductions in traditional foreign fishing. The question is one of determining what, if any, limitations there are on the expansion of the coastal state guaranteed share (including that under joint venture arrangements) at the expense of traditional fishing by others.

The U.S. has an interest in increasing its own guaranteed share in major fishing grounds off its coasts. At the same time, it has an interest in protecting U.S. fisheries for coastal species off foreign coasts. Moreover, attempts to reduce Soviet and Japanese fishing off our coast solely on the basis of U.S. capacity (i.e., with no treaty provision for traditional fishing) would cause strains in our relations. On the other hand, attempts to accommodate their interests bilaterally in the absence of multilateral treaty obligations to do so, might meet with strong domestic political opposition. Accordingly, the U.S. has favored a compromise on the issue that permits a gradual phase-out or compensation. The Delegation has been authorized broad flexibility in dealing with this issue, which we believe should be continued.

Developing countries tend to regard discussions of historic or traditional rights as inherently discriminatory against them, and this may at the least require rephrasing of the concept in terms of economic and social dislocation.

Under a system of coastal state license fees, we must determine the best relationship between the licensing system and traditional fishing. The licensing and traditional fishing elements can be combined in a manner which is consistent in theory with our existing approach, namely that traditional fishing states are subject to the same access conditions as anyone else, but have a priority

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of access.* Consequently, for substantive and tactical reasons, our broad flexibility on the issue should be maintained and our approach should continue to be primarily one of encouraging compromise while continuing to press our objective of including some provisions for traditional fishing in the Treaty. We may continue to address the issue only in general terms and avoid advocating a specific solution until we have a better understanding of what is negotiable.

(b) Highly migratory species

Assuming agreement on adequate coastal state control of anadromous species--which is generally consistent with the coastal state trends of the negotiation--our most difficult fishing negotiating problem relates to highly migratory species. Although practically all of the public and private debate has focused on tuna, the term highly migratory species also includes whales, small cetaceans, and other highly migratory marine mammals.

Because of their wide migration patterns, sometimes trans-oceanic, separate regulatory systems in individual 200-mile zones and in areas beyond 200 miles could not achieve sufficient control to ensure conservation or equitable allocation of the stocks of highly migratory species. A regional or international system capable of management throughout the migratory range of the stock is necessary. The U.S. interest in a regional or international regulatory system for tuna derives from these inherent problems of regulation, as well as from our interests in protecting

*For example, one alternative would be to give traditional fishing states, to the extent of their traditional fishing rights, the option of paying the average fee obtainable for that fishery from fishermen of other states.

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our large distant water tuna fishery. Since whales and small cetaceans of one species occur in many oceans and at distances many hundreds of miles from any coastline, these creatures must be conserved on a worldwide basis through an international system. Whales and small cetaceans are unique among highly migratory species, first because they are mammals and second because the interest shown in them by the vast majority of nations has been for their conservation rather than for their exploitative value. Only a few nations are now involved in exploiting these species. Whales and small cetaceans should be excluded from any arrangements of coastal state preference and if possible the need for international management should be specified. To whatever extent possible or appropriate, in working on the basic idea of international management, the specifics should be discussed and accommodation for these species made.

In view of the coastal state trend of the negotiation, our fundamental choice with respect to tuna is to negotiate the best solution we can (attempting to gain support for pressuring Peru and Ecuador into a reasonable compromise or overriding their objections) or to risk being outvoted on the issue.

We believe negotiation in the LOS forum is the preferable course, and permits us to achieve some, perhaps considerable, protection for our distant water tuna industry. It is pertinent here that an increasing number of states appear to recognize that highly migratory stocks require a unique regime. Negotiations may also be helpful in solving our problem with the U.S. Trust Territory which has coastal interests in tuna. We have both an obligation and a long-range security interest in trying to accommodate the Trust Territory's LOS interests which are based in large part on its tuna interest.

Furthermore, even though there are many states interested in this issue, we will not resolve our major tuna problem off Ecuador and Peru if they do not ultimately accept an agreed solution; those economic sanctions we have chosen to use against them have not been effective, and we have thus far consistently rejected the idea of military protection for the tuna fleet. In addition, mounting Congressional

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pressure for the unilateral 200-mile claim is undercutting our bargaining position in this area.

On the other hand, negotiation may subject us to considerable pressure from the tuna industry and its supporters in Congress, although we will attempt to defuse this as much as possible through our consultations with them. This pressure is unlikely to be offset by countervailing pressure from coastal fishermen unless we are forced to choose between the two interests. As these factors show, this is an extremely sensitive area in terms of tactics, and the negotiations will have to be carefully carried out. Accordingly, use of the authority sought in this section will be determined by the Chairman of the Delegation in consultation with the Chairman of the Task Force and the senior representatives of the agencies concerned.

The basis of our approach would be to retain the requirement for international or regional regulation of tuna. However, within this framework, we would add elements accommodating coastal state political and economic interests. In this connection, the political interests may be at least as important as the economic, particularly where Peru and Ecuador are concerned. In other words, the appearance of victory on the jurisdictional issue may ultimately permit those states to compromise substantially on the U.S. economic interest in access. In any event, our ability to build up developing country pressure on Peru and Ecuador to compromise will be enhanced to the extent we make our own views appear reasonable and compatible with the developing countries' concept of an economic zone.

- (1) Possible accommodations concerning fees, preferential rights, and licensing

There are a number of possible accommodations we might make within the framework of international or regional regulation. Our first preference would be for a royalty or fee system with agreed fees paid to the coastal states for all fish caught within 200 miles of their coasts. The idea of giving coastal states some benefit for fish caught within the 200-mile zone

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is appealing psychologically. It has been discussed with our tuna industry and received reserved support. Under this approach, either the Treaty would establish the fees or criteria for such fees (subject to dispute settlement) or the fees would be fixed by regional commissions or agreement, or both.

Another type of accommodation would be based on a system of preferential rights. If necessary, this could be combined with the royalty system described above. The U.S. has negotiated specific preferences based on economic criteria for developing tuna fisheries (for Mexico) in the Inter-American Tropical Tuna Commission (IATTC). This is known, and we are now committed within the IATTC to discuss with Mexico and the Central American States new regulatory systems which take into account developing fishery needs. Moreover, the U.S. was in fact prepared to accept coastal state preferential rights for Peru and Ecuador in direct negotiations, the major restraint being our reluctance to use an LOS bargaining chip or to otherwise prejudice our juridical position before the LOS Conference. Accordingly, we should be prepared to accept an accommodation in the LOS Treaty that establishes a preference in principle for coastal state fisheries based on specific criteria such as the developing nature of the fisheries. It is in our economic interests, and probably more negotiable politically, to limit that preference to the fisheries zone off the coast of the country concerned. Alternatively, we could discuss special allocations, based on specified criteria, for the entire catch of a tuna stock anywhere, as we do now with Mexico.

While the above approaches could include joint ventures, they do not contemplate coastal state licensing of foreign fishing, which goes to the heart of our dispute with Ecuador and Peru. In negotiations with Ecuador and Peru, we have in fact been authorized to accept a scheme which the coastal state could interpret as a form of licensing, on the basis of guarantees regarding access and fees.

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A combination preferential rights-licensing system or allocation-licensing system would not be regarded favorably by our fishermen. This is a very sensitive issue that requires very careful consideration before any such possibility is even implied. Moreover, the acceptability of such an approach would depend on a critical degree upon the criteria and protections included. However, a system with a licensing element may be necessary in reaching an accommodation within the framework of international or regional regulation. Thus, although we will try to work out a system which does not include licensing, if the other approaches do not work and there are reasonable indications that the hard-line states favoring licensing are prepared to make an accommodation with the United States and other distant water tuna fishing nations, we should maintain flexibility in this area in accordance with the recommendation below. The Law of the Sea Conference is not the proper forum for negotiation of specific allocations, which is a function of the international commissions established or to be established, but a generalized rule with general criteria could be worked out in the Conference if we decided to do so.

(2) Possible accommodations concerning enforcement

It is our assessment that the chances for maximizing U.S. economic benefits from any such negotiation would be significantly enhanced by offering political (jurisdictional) concessions in exchange.

We could agree to give coastal states the same right to enforce international or regional tuna regulations in a 200-mile zone as we have proposed regarding enforcement of regulations for coastal species. We have proposed a system of coastal state arrest and flag state trial for coastal and anadromous species in the LOS negotiations, provided the flag state has established a domestic system for trial in such cases. We have agreed to this system off the coast of Brazil, and it appears in a number of our other treaties. In fact, coastal states would be likely to board tuna vessels under our current articles in order to check for the presence of coastal species anyway; indeed, we as a coastal state would hardly be willing to agree that we could not board any vessel that

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tells us it is not fishing for coastal species off our coast. One of the few issues that was once tentatively agreed with Ecuador and Peru in direct negotiations was this type of enforcement system, which even included a reference to transfer of an arrested vessel to the flag state after coastal state proceedings. While we are not requesting such authority in this paper, the U.S. Delegation in the CEP talks was in fact authorized to agree even to coastal state prosecution, but industry fears of prison sentences and absence of significant pressure on the issue from Peru and Ecuador at the time led us to withhold exercise of that authority.

Were we sufficiently satisfied with the general result, we could in fact significantly sweeten the political and juridical appearance of this approach. For example, if there are acceptable provisions on allocation and licensing of tuna, international and regional regulations, and enforcement, it is entirely possible to specify that the coastal state shall regulate all fishing in the 200-mile zone in accordance with the provisions of the Treaty and international and regional regulations adopted pursuant thereto. (In effect this means the regional regulations prevail.) The restraints on recognizing jurisdiction in a direct settlement with Peru and Ecuador (i.e., harm to our juridical position or loss of an LOS bargaining chip) clearly do not apply in the global forum of the LOS Conference. We do not recommend that such political concessions be the starting point for discussions on the issue, but we do believe that willingness to consider a substantial political quid-pro-quo would be of substantial benefit to us.

(3) Regional Commissions

Coastal states (and Micronesia) are likely to be suspicious of international or regional commissions even if they are satisfied with the Treaty rules the commissions would apply. As we have learned as a coastal state ourselves, the commissions tend to be obstructed by distant-water fishing states. Our major objective in supporting the regional commission approach is adequate participation in the decision-making process. Accordingly, if it will

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help get agreement on the basic commission role in regulation and allocation, we should try to solve the coastal states' problems not only by supporting rapid dispute settlement procedures, but through guidelines to deal with an impasse situation, a rule requiring coastal state agreement to any regulations applicable in its zone (this is the case anyway if unanimous agreement is required under commission procedures), or other reassuring provisions.

Recommendation

The possible accommodations presented above represent general concepts we wish to explore. However, the route we choose and the details of any specific plan remain to be worked out after further consultation and negotiation. In addition, because it is difficult to predict the direction of our discussion with other states on these issues, the Chairman of the Delegation in consultation with the Chairman of the Task Force and senior representatives of the agencies concerned will also maintain the flexibility to consider concepts or plans other than those specifically discussed herein in support of our objectives on highly migratory species.

In sum, as outlined above, we recommend negotiating flexibility to protect our distant-water tuna industry in the framework of international or regional regulation coupled with specified coastal state preferences and rights as necessary to prevent an ultimate defeat on the issue and to promote a timely and successful Conference. In this connection, we note that an accommodation on tuna must not only provide adequate protection for our tuna interests, but should be accompanied by a more accommodating approach by the coastal states concerned on our other interests, including straits, general navigation, and deep seabed issues.

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F. Pollution

The current United States position includes a general obligation not to pollute the marine environment, requires adherence to international standards for marine-based sources of marine pollution, provides for the establishment of international standards for such sources of marine pollution, and permits the coastal state to apply higher standards to seabed resource activities, drilling, and fixed installations in the exercise of its rights in the Coastal Seabed Economic Area. With respect to vessels, a state may not impose higher standards except on vessels entering its ports and on its flag vessels, although it may enforce international standards in its territorial sea, has limited enforcement powers beyond, and can prosecute vessels in its ports for violations of international standards irrespective of where they occur. Warships are exempt from the U.S. pollution articles and obtaining an exemption is part of the U.S. position.

There are general difficulties in the negotiation resulting from developing country fears concerning the effects of environmental standards on economic development. We have not pressed for binding international standards for land-based sources of marine pollution, which seems to be their major concern in this regard. In any case, land-based pollution issues will not be addressed in any detail at the Conference. The most difficult aspect of this issue will be securing LDC adherence to minimum international standards in the Coastal Seabed Economic Area. Similarly, there is some sentiment favoring standards no higher than flag state standards for developing country vessels, although this position is not widely held. We will continue to resist a situation in which obligations are in effect placed only on developed states.

Vessel-source pollution

The most sensitive pollution negotiating problem relates to vessel-source pollution. The advocates of a 200-mile exclusive economic zone or patrimonial sea include general pollution control jurisdiction as one of the coastal state rights. Without further specificity, this would apply to vessels and would in essence give coastal states a basis for serious interference with navigation. While there is no widespread opposition to international standards for vessel-source pollution, many coastal states--led by Canada and Australia--favor "residual" coastal state rights to impose all types of

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pollution standards in a zone beyond the territorial sea when the coastal state judges that international standards do not exist or are inadequate, and coastal state enforcement of international and national standards. Australia favors compulsory dispute settlement to prevent abuse of the proposed coastal state rights. Japan and France have proposed limited coastal state enforcement of international dumping and discharge standards in a zone beyond the territorial sea of perhaps 50 miles.

The October Conference on Marine Pollution, sponsored by the Intergovernmental Maritime Consultative Organization (IMCO), faced a number of aspects of the coastal state problem, although it was not intended to resolve jurisdictional issues. The new IMCO Treaty establishes international construction and discharge standards and permits a coastal state to enforce international standards "within its jurisdiction," a term not defined by the Treaty.

A so-called "compromise" proposal on coastal state standards achieved a 2/3 majority in committee but not in plenary after vigorous opposition by the United States. The proposal had three elements:

- (1) the coastal state may impose higher standards in respect of vessel discharges within its jurisdiction where specific circumstances so warrant;
- (2) the coastal state may not impose higher vessel construction, design, or equipment standards in respect of pollution control (even in ports); and
- (3) the prohibition on higher construction standards does not apply in areas the particular characteristics of which, in accordance with accepted scientific criteria, render the environment exceptionally vulnerable.

It should be noted, however, that it may not be possible to directly translate this experience into predictions regarding the law of the sea negotiations since many delegates were not familiar with or were not representing the law of the sea positions of their governments. Also, of course, others were negotiating with their law of the sea interests in mind and were trying to gain negotiating advantages for later use.

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United States ability to deal with this problem has been, and remains, limited by conflicting policy interests. Permitting coastal state construction standards outside ports in vaguely defined areas seriously prejudices our navigational interests and was our principal objection. We did not like the "specific circumstances" restriction on our right to impose coastal state discharge standards, which are required by the Federal Water Pollution Control Act. The prohibition on higher construction standards, particularly in ports, is inconsistent with the thrust of the Ports and Waterways Safety Act, which provides for United States construction standards.

Construction and discharge standards in the 1973 IMCO Convention are high and will substantially reduce vessel pollution, although in some respects we would have preferred higher standards.

Also, we were later successful in creating a new Marine Environment Protection Committee in IMCO, which is now functioning, to update and improve vessel pollution standards and to make IMCO a more effective institution in dealing rapidly with environmental problems. The new committee could also be effective in providing special pollution control standards of all types to deal with special regional problems as we have proposed.

Without minimizing the difficulties that remain, our success at IMCO in obtaining an exemption for warships and other government non-commercial vessels, and our success in obtaining compulsory dispute settlement, provides a stronger basis for obtaining both in the LOS pollution negotiation. In particular, the warship exemption language was negotiated directly with the Mexican representative who has chaired the LOS pollution working group, and who had been somewhat hostile to the idea; compulsory arbitration was adopted with the tacit cooperation of the USSR, despite lack of formal support and a private indication of an intention to reserve on the article.

Disapproval of all of the following four options would mean that the United States would continue to support and work for adoption of its present position although there would be additional exploratory authority as noted in paragraphs (5) and (6).

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(1) Option on Coastal State Enforcement of International Discharge Standards: that the delegation be authorized to support, if necessary to attain widespread maritime state agreement, coastal state enforcement (including arrest and prosecution) of international discharge and dumping standards in a zone extending to a maximum breadth of 50 miles from the coast. This would include discharges prohibited or regulated pursuant to the 1973 IMCO Convention in the areas prescribed therein and dumping prohibited or regulated pursuant to the 1972 Dumping Convention. Discrimination between vessels of different nationalities (including those of the coastal state) would be prohibited. U.S. agreement would be conditional on acceptance of an exemption for warships and on adequate procedural protections for commercial vessels including prompt release under bond, liability for unreasonable enforcement actions and compulsory dispute settlement.

Pros

1) The United States is in a small minority in its views on extreme limitations of coastal state rights and must be prepared to move on the issue if we are to influence the views of the majority. The advocates of the exclusive economic zone and patrimonial sea concept include general, although undefined, pollution control jurisdiction in a 200-mile zone. Canada, Australia, and the majority of coastal states support coastal state enforcement rights as well as residual rights to set standards. France, Japan, the U.K., and Norway, all maritime states, have either publicly or privately been willing to accept coastal state enforcement rights in a zone.

2) Our major concern in terms of the possibilities for coastal state abuse and disruption of shipping would be a right for coastal states to set and enforce construction standards. Our major opponents make no distinction between coastal authority to set discharge and construction standards, and the negotiation is likely to continue to avoid that distinction unless we can actively exert influence. This option would considerably enhance our ability to shape the course of the negotiations.

3) The safeguards contained in the option including compulsory dispute settlement and liability for unreasonable enforcement actions would minimize any potential for abuse. Also, no enforcement action could be taken unless an illegal discharge had been observed by the coastal state.

4) Discharges may well damage the coastline and flag state enforcement alone is not sufficient to protect U.S. environmental interests off its coasts. Port state enforcement, which we have proposed, would be effective but we have met strong opposition from maritime states and have received little support from others. Limited coastal state enforcement rights may be the only realistic possibility of achieving sufficient protection in this negotiation.

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5) Discharges present the most visible and thus politically sensitive pollution problem for coastal states and have been the basis for their complaints.

6) A warship exemption in the pollution section will be easier to obtain if coastal states are satisfied with the basic pollution control regime. This option could thus assist us in avoiding negotiating problems on the pollution regime for warships both in coastal areas generally and in straits.

Cons

1) The U.S. draft pollution articles were tabled in the summer of 1973, are very complex, and have not received adequate consideration by other delegations. More time is needed to test their negotiability. In any event, we may be able to simplify them and thus increase their negotiability.

2) Since the last substantive law of the sea negotiations in August 1973, the 1973 IMCO Marine Pollution Conference has taken place and has produced high vessel pollution control standards, thus enhancing the negotiability of our present position which is based largely on international standards.

3) Our present position provides reasonable protection of the marine environment while posing minimal danger to navigation.

4) Jose Vallarta of Mexico, a key figure as Chairman of the Seabed Committee pollution working group, has told some delegation members privately that his concept of a final LOS settlement would be navigation rights in straits, no coastal state pollution control zone and an economic zone satisfactory to developing countries. Further exploration with LDC leaders concerning an economic zone accommodation without a vessel pollution element should be undertaken.

5) Coastal state enforcement authority provides a basis for coastal state interference with navigation off its coast and could thus harm U.S. national security and commercial navigation interests. The abuse potential is greater than with resource jurisdiction since pollution violations can credibly be charged against any vessel while

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resource-related violations are logically restricted to vessels equipped for fishing or seabed mineral activities.

6) Enforcement action against discharge violations has inherent difficulties which limit its effectiveness. To extend the enforcement zone to 50 miles may, then, add little in terms of actual environmental protection. Discharges at night, in poor weather or in large areas are difficult to detect.

7) Adoption of this option is not likely to be enough to satisfy Canada, a leader of the coastal state group.

(2) Option on the 100-mile zone: that if Option 1 is approved, the Delegation be authorized, in the context of Option 1, to support a zone of a maximum of 100 miles from the coast for coastal state pollution enforcement if agreement cannot be reached on a 50-mile limit. This option could, of course, be approved in conjunction with Option 3 as well. Under Option 1 above and this option, the U.S. would make it clear, publicly and privately as appropriate, that it could not accept coastal state pollution enforcement (or standard-setting) in a zone of 200 miles breadth.

Pros

1) Canada, a leader of the coastal states in the pollution negotiation, has used the 100-mile figure in its Arctic Pollution Control Zone and probably could not accept a lesser figure. U.S. acceptance of the 100-mile figure could induce Canada, in the context of overall discussions on the pollution regime, to work for general acceptance of 100 miles, thus providing major assistance to us in avoiding a 200-mile limit.

2) While any arbitrary figure cannot necessarily be justified from an environmental standpoint, there is a 100-mile zone in many areas for international standards in the 1954 Oil Pollution Convention. Also, the U.S. attempted to obtain a 100-mile "no-discharge" zone in the 1973 IMCO Convention, thus indicating some environmental rationale for the 100-mile figure.

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3) If agreement is not possible on a 50-mile figure, we should move to 100-miles since otherwise the negotiation would almost certainly move to a 200-mile zone.

4) The expanded area would not greatly increase the possibility of abuse by coastal states since the physical patrol capability of most states is limited, since a discharge must be observed before any action can be taken, and since there would be procedural safeguards.

Cons

1) This would present a larger area of potential interference with navigation by coastal states.

2) This would probably not significantly increase environmental protection, particularly off the U.S. coast.

3) The 100-mile zone presently existing in the 1954 Oil Pollution Convention does not include any coastal state rights and is thus not a precedent for use of 100 miles in this situation.

4) International discharge standards presently applicable beyond 50 miles differ from those applicable within 50 miles and violations of them are almost impossible to substantiate without boarding the vessel.

5) Canada has continually supported standard-setting rights as well as enforcement and this option, then, would appear not to satisfy her position.

(3) Option on Coastal State Discharge and Dumping Standards

Discussion: Under existing authority in NSDM 177, a United States objective is to obtain a right for coastal states to establish and enforce vessel pollution control standards in the territorial sea. However, for tactical reasons related to the negotiation of straits transit, we have publicly proposed that the coastal state have only an enforcement right and no right to set standards in the territorial sea.

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As is stated earlier, we now feel that it will be tactically advantageous to argue that the pollution regime in straits be the same as the general pollution regime rather than to attempt to negotiate a separate pollution regime for straits. Consequently, we will try to negotiate a general vessel pollution regime from the coast seaward, thus simplifying the connection with a straits regime. If option 3 and option 1 are approved granting coastal state rights to set discharge standards, we could accept it as a final settlement since we do not have a major domestic concern with pollution control construction standards for ships transiting the territorial sea. However, if option 3 is not approved, the existing authority in NDSM 177 on this point would continue regarding discharge standards. The issue of authority in ports is dealt with separately.

Option: that the Delegation be authorized to support a coastal state right, in addition to the right in options 1 or 2 to establish in the zone discharge and dumping standards higher than the international standards. The coastal state would be authorized to enforce both the international and its own higher domestic standards. Discrimination between vessels of differing nationalities (including those of the coastal state) and the setting of any discharge or dumping standards which would have the practical effect of preventing navigation would be prohibited. The coastal state authority would, as in option 1 above, be subject to the warship exemption and the same procedural protections for commercial vessels. The U.S. would, of course, continue to strongly oppose any coastal state standard-setting or enforcement authority for international or domestic construction standards off the coast.

Pros

- 1) Discharges present the most visible and thus politically sensitive pollution problem for coastal states and have been the basis for their complaints.
- 2) Discharges in areas near the coast may well damage the coastline and thus coastal states, including the U.S., have a legitimate interest in controlling them.
- 3) Concern with discharges and dumping seem to be at the heart of the positions of France, Japan, and Norway. Although none of these have publicly stated a willingness to accept coastal state standard-setting, we had private

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indications to that conclusion. Thus, this would provide a more unified maritime country approach.

4) This would considerably enhance our ability to avoid coastal state rights regarding construction standards since we could help to shape the course of the negotiations. To date our opponents have avoided the discharge/construction distinction and the negotiation may well continue to avoid it unless we can actively exert influence. This distinction is more important than the enforcement vs. standard-setting distinction since enforcement of construction standards is far more dangerous than the setting of higher discharge standards.

5) A number of developing countries have difficulty reconciling their political support for coastal state rights with their shipping interests (India, Liberia, Ghana, and others). This may offer them a reasonable compromise.

6) If adopted for an area broader than 50 miles (the present "no-discharge" area for oil in the 1973 IMCO Convention) it would provide the U.S. and other coastal states with additional protection for the environment since we could, among other things, apply high standards to tanker discharges beyond 50 miles as we proposed to do in the IMCO Convention.

7) A warship exemption will be easier to obtain if coastal states are satisfied with the basic pollution regime. This could thus assist us in avoiding negotiating problems on warships in straits as well as in coastal areas.

8) At most, coastal states could set zero discharge limits which would not provide substantial operational problems at least with regard to oil, whereas, with construction standards, coastal states could set an almost unlimited variety of standards. As to dumping, we do not dump off the coasts of others and would thus have no difficulty complying with a "no-dumping" standard.

9) If coastal states do not have discharge standard-setting rights outside the territorial sea, they may decide that an extension of the territorial sea is necessary to protect their environment.

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Cons

- 1) The October 1973 IMCO Marine Pollution Conference has produced high standards for vessel pollution control which apply within 50 miles from the "nearest land" and also provide for "special areas" where effectively a "no-discharge" standard applies to all commercial vessels. This enhances our negotiating position favoring exclusively international standards.
- 2) Until the need for standards stricter than those provided by the 1973 IMCO Convention can be demonstrated, establishment of further standards is premature and may work to the detriment of bringing the 1973 Convention into force.
- 3) Enforcement action against discharges has inherent difficulties which limits its effectiveness in protecting the environment.
- 4) If a zone of more than 50 miles is authorized, vessels would be required to discharge further out to sea if coastal states utilized this right. This may well produce some operational problems.
- 5) The environmental benefit to the U.S. would be minimal since high standards already are applicable to 50 miles which is the area of greatest environmental sensitivity and greatest potential for pollution.
- 6) Coastal state rights to set higher standards could undercut efforts to achieve higher international standards.
- 7) As the rights of the coastal state in a zone increase, such an area more closely approximates a territorial sea.

(4) Option on Port State Construction Standards

Discussion: We will continue to support our existing position that there should be exclusively international vessel construction standards for pollution control in the territorial sea and on the high seas and that coastal states should not have any right to set higher standards. Also, we will continue to support the right of the flag state to set higher standards for its vessels (thus covering all traffic between U.S. ports). We will also continue to support internationally agreed

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procedures in IMCO for establishing special construction standards in special areas that clearly require it, such as the Arctic. The present U.S. position also allows port states to set higher construction standards for all vessels entering their ports. While it is clear that the U.S. prefers this result, and that the Delegation should continue to be authorized to accept it, the question is raised as to whether, for tactical reasons, the Delegation should have the authority, in conjunction with options 1, 2, or 3, to support the elimination of the port state right. Any decision to use that authority would be made by the Chairman of the Delegation in consultation with the Chairman of the Task Force and the senior representatives of the agencies concerned.

Option: That the Delegation can support exclusively international vessel construction standards for pollution prevention for foreign ships entering ports. This would, however, also allow port states to apply internationally-agreed standards prior to their entry into force or prior to their internationally-agreed effective dates. Because of Congressional sensitivity on this point, we would consult appropriate Congressmen and staff members in advance of utilizing this authority.

Pros

- 1) The apparent inconsistency between U.S. opposition to higher coastal state construction standards and support of higher port state construction standards is tactically disadvantageous and undercuts our best argument--that coastal states will establish inconsistent standards and thus harm navigation.
- 2) Because most traffic off our coast enters U.S. ports, we are open to the charge of protecting ourselves while denying protection to states which have large transit traffic off their coasts.
- 3) A number of maritime states opposed port state standards and we may be able to use this to influence their position on other aspects of the vessel pollution issue. Our experience in the IMCO Conference indicates that many maritime states are willing to move rather far toward coastal state vessel pollution control rights in order to obtain a quid pro quo of a limitation on port state rights.

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4) The U.S. utilized the threat of port state standards to obtain high standards in the 1973 IMCO Convention, thus largely achieving its major international purpose in the field of international construction standards for pollution control.

Cons

1) The result would be inconsistent with the thrust of U.S. legislation. Environmentalists and their supporters in Congress, particularly those from states with major oil ports, will find it difficult to accept permanent relinquishment of this existing right. In addition, a recent Supreme Court decision leaves open the possibility that individual states of the United States could set higher standards, thus increasing domestic political pressure against restrictions on that right.

2) Port states are unlikely to disrupt their own trade by establishing unreasonable or inconsistent standards. This is a distinction between port and coastal state standard setting that can be used in response to charges of inconsistency in the U.S. position.

3) Relinquishment of this right will eliminate future U.S. action against foreign ships for foreseeable and possibly unforeseeable problems and eliminates the possibility of U.S. domestic application of the IMCO standards to smaller foreign tankers than specified in the IMCO Treaty. Most tankers entering U.S. ports are too small to be covered by some of the new IMCO construction standards.

4) This would diminish our negotiating ability to raise international standards in the future. This is particularly important since under the 1973 IMCO Convention a small number of major maritime states with 50 percent of the world's tonnage can block adoption of amendments.

5) The basic vessel pollution regime may only be settled in the overall context of the settlement on an economic zone, thus making it unnecessary to make

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substantive concessions to gain tactical advantage.

6) Since almost all vessel traffic off the coast of Canada is headed for the U.S. or Canada, we could agree bilaterally to apply high construction standards to all vessels entering U.S. and Canadian ports in the context of obtaining an overall accommodation with Canada on pollution issues. This possibility would be lost if we utilized the authority in this option.

(5) Ship-Rider Concept

Recommendation: that the Delegation have the authority to explore privately the concept of a "Ship-Rider" approach to ensure enforcement of tanker discharge standards. Under this approach, a ship-rider would be placed aboard each tanker at the outset of a voyage and he would monitor the ship's operations as they relate to pollution prevention. If he detected illegal discharges, he would be obliged to report to the authorities of the next port-of-call or of the flag state who would be required to take enforcement action against the vessel.

(6) Specific Area Construction Standards

Recommendation: that the Delegation be authorized to explore privately the concept of coastal state standard-setting, subject to IMCO approval, of construction standards for well-defined areas with special ecological and navigational problems. This possibility was broached by Canada during recent bilateral consultations and further discussion would be useful in determining a possible accommodation with Canada.

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G. Scientific Research

The United States has a major interest in assuring the maximum possible freedom of scientific research. The U.S. has a substantial investment in oceanography that includes not only the value of specialized ships and equipment, but also laboratories for analysis and facilities for training and education. The U.S. interest includes important military and economic interests, as well as the interests of the scientific community. One indication of the economic value is the discovery by U.S. scientists in 1970 of the hydrocarbon potential in many areas of Southeast Asia and the similar recent discoveries off the West Coast of Africa.

Freedom of research will be most difficult to maximize in areas beyond the territorial sea where the coastal state exercises resource jurisdiction. Difficulties also exist in the deep seabed where proposals have been made that would exclude research from existing high seas freedoms and make it subject to regulation by the international seabeds authority or restrict the areas in the deep seabed where research can be conducted. We shall continue to oppose restrictions on scientific research in areas beyond national jurisdiction, subject to reasonable international environmental regulations on deep drilling, to a general obligation to conduct research with strict and adequate safeguards for the protection of the marine environment and to the requirement to publish openly the resulting data.

Under the existing Continental Shelf Convention, scientific research concerning the shelf and undertaken there requires coastal state consent. The existing requirement that the coastal state "shall not normally withhold its consent" has proved inadequate to ensure reasonable scientific access to the continental shelf off many countries because of the ambiguity of the phrase and the absence of compulsory dispute settlement.

If a consent regime were applied to the proposed 200-mile or continental margin limit for coastal seabed resource jurisdiction, the area of greatest interest to U.S. scientists and most U.S. scientific research off

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foreign coasts would be subject to coastal state control. Moreover, the tendency of developing countries to treat fisheries and seabed resources together in an economic zone context suggests the adoption of the same consent regime in the waters above the seabed. In fact, the supporters of an exclusive economic zone are generally supporting a coastal state consent requirement for all research in the zone.

The U.S. proposal does not include a requirement for coastal state consent, but rather imposes a series of obligations upon the researcher and his flag state to respect coastal state resource interests in connection with research in waters and seabed areas where the coastal state exercises jurisdiction over resources. These obligations include advance notification, participation, data sharing, assistance in interpreting data and evaluating results and compliance with applicable international environmental standards. They are designed to accommodate coastal state interests in both seabed resources and coastal fisheries, while protecting our interest in maximum freedom of research.

In addition, a significant portion of U.S. military research in the oceans is conducted from civilian vessels. This U.S. research interest is protected in our present articles by a subtle structuring of the language so as to make it arguable that compliance with obligations to the coastal state is mandatory only when research is potentially related to resources.

The initial response to our proposal has been disappointing, with opposition coming from both developing and developed countries. The USSR, with a research interest parallel to ours, has proposed even greater coastal state control over seabed research than exists at present, while demanding complete freedom of research in the waters above. This may be related to Soviet opposition to extensive coastal fisheries jurisdiction. The U.K., Canada, and France have reacted similarly, in part because they may consider their interest in coastal state seabed resource

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jurisdiction, unrelated to scientific research, protected by leaving the 1958 Continental Shelf Convention undisturbed. Canada may be prepared to discuss a coastal state obligation to grant consent under specified circumstances.

While there is disagreement as to whether a change in the U.S. position should be authorized, no agency maintains that an early change in the United States position is either necessary or desirable. Scientific research was the last issue on which work began in the Seabed Committee, and consideration of the issue is accordingly still dominated by rhetoric and posturing that has been overcome to a greater extent on other issues. Our approach to the issue is novel, and we should spend more time explaining it and refining it. If possible, we will try to depoliticize the issue by giving it less prominence in public debate. In sum, it is agreed that the Delegation should make every effort to persuade others of the merits of the approach we have taken.

However, the opposition of key developed States on continental margin research and the numerical strength of the coastal developing States put us at a disadvantage on this type of issue. Moreover, neither side is likely to believe that the other side will wreck the Conference over it.

Our best chance for success with respect to opposition from developed States is to emphasize the similarities of our research interests and attempt to separate research issues from coastal seabed economic jurisdiction issues. This is one of the reasons we are attempting to encourage the development of a regime different from that in the 1958 Continental Shelf Convention for resolution of seabed resource jurisdiction, and to address the outer boundary problem in connection with that regime rather than the Convention.

With respect to developing countries, our best chance for success is in persuading them that they can obtain more from a multilateral settlement than they can from bilateral bargaining for permission to conduct research. To achieve this, means must be devised to enhance their re-

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search capabilities in exchange for support for an advantageous scientific research regime. We are continuing to examine alternatives which may benefit both the developing countries and the United States and which will not impair U.S. marine science capabilities. Some possibilities have been identified which we may wish to explore with developing countries and other developed countries:

- seek to foster development of regional training centers for scientists and technicians from developing countries, including multilateral support and some commitment from developing countries to increase the possibilities of success;
- provide carefully selected developing countries with research vessels from U.S. government surplus property for operation by the country in connection with local and regional research;
- indicate U.S. intentions to make a significant allocation of funds (e.g., \$50 million over ten years) for development of regional training centers and provisions of research vessels as outlined above, as well as contributions to other international programs in conjunction with contributions by other countries, for oceanographic research by developing country scientists;
- expand upon the coastal state's right of participation by committing the research state to provide for coastal state participants to travel to the researching state or scientists of the latter to travel to the coastal state to participate in planning the research (with appropriate protection for U.S. control), coastal state participants to accompany the vessel when

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research is conducted, and coastal state participants to return to the institution where analysis and evaluation of the scientific data will occur.

However, a question arises as to the necessity for additional authority for the Delegation should it appear that there is no basis for agreement without a consent requirement. Accordingly, the following option is presented:

Option

Should the Chairman of the Delegation, in consultation with the Chairman of the Task Force and senior representatives of the agencies concerned, determine that there is no basis for agreement without a consent requirement, and that an accommodation could be reached which would better serve United States research interests than being outvoted on the issue, the Delegation is authorized to negotiate a consent requirement in areas of coastal state resource jurisdiction, provided that the coastal state is required in all cases to grant consent if specified criteria are met. The criteria would be those we are already authorized to support as flag state obligations. Consent must also be presumed in the absence of a denial of consent within a fixed period of time. As at present, compulsory dispute settlement would apply. Our approach and instructions regarding military research would continue unchanged.

Pros

(1) This result would be a significant improvement over the existing requirements of the 1958 Continental Shelf Convention and the proposals of other countries since consent would not be discretionary. If certain conditions are met, consent must be granted, and compulsory dispute settlement procedures would be available.

(2) This issue is not an all or nothing proposition. The point of the option is to permit the Delegation to decide if the risks of holding out exceed the disadvantages of some accommodation on consent--a judgment whose timing

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is critical and that can best be made by those present at the negotiations.

(3) Our ability to protect our interest in military research depends largely on subtle drafting that is included in the ultimate treaty without a full explanation of our problem. This, in turn, requires active participation in drafting, which will not be possible if the majority is drafting a consent regime and we cannot participate. Even the requirements of our existing proposal--e.g., data sharing and participation--create serious military research problems unless an article is artfully drafted.

(4) If the developing countries conclude that there is no way to work with the U.S. on scientific research issues, we may not only lose influence over the outcome in coastal areas, but in the deep seabeds as well. This, in turn, could have negative implications for our positions on the deep seabed, including our security interests in assuring that the international authority does not regulate all activities on the deep seabed.

(5) Some states that believe that yielding their right of consent under the 1958 Convention amounts to a renunciation of a vested right may be more amenable to this approach, which in essence does not eliminate the right but imposes obligations regarding its exercise.

(6) Determination to stick with the present position to the end is credible only if the opposition believes our determination is genuine. It is more likely that the opposition will believe that we are playing to a domestic audience and fully expect to be defeated.

Cons

(1) This would not necessarily be an improvement over the 1958 Continental Shelf Convention since the option applies a form of consent not only to shelf research but to research in the water column as well and, in areas where the shelf is narrower than the outer limit of the jurisdictional area, would expand the consent regime beyond the shelf.

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(2) Despite good faith efforts by the researching state, under this proposal a coastal state could deny consent by stating that the obligations have not been met. While adequate compulsory dispute settlement procedures would guard against repeated refusals of this type, the option amounts to a practical right of denial for a specific cruise due to the operational necessities of oceanographic research, a right of denial not inherent in our present position.

(3) In light of the subtle structuring of our draft articles to protect military research, a change of position during the negotiation could draw attention to our interest in military research and cause difficulties in preserving it.

(4) There is a juridical similarity between a consent regime in the territorial sea and a qualified consent regime. Thus a qualified consent regime such as this implies greater coastal state jurisdiction rather than less and is inconsistent with our objective of limiting coastal state jurisdiction as much as possible.

(5) From the viewpoint of coastal states, this option does not meet their desire for consent if it must be granted when specified criteria are met and, consequently, coastal states should have little greater preference for this option than they do for the original U.S. position. Therefore the ultimate effect of the option could be to facilitate movement to a more stringent consent regime to which the U.S. could not agree.

(6) With the possible exception of the Soviet Union, no other country in the negotiation conducts as much research and has as great an interest in protecting the right to conduct research as the U.S. This is a visible reality to other countries whose positions on the issue may be dictated by tactics or a desire to enhance their jurisdiction beyond the territorial sea. If we stand firm, movement toward our present position, which is the middle ground between the Soviet approach and the consent approach of many coastal states, is possible once resource issues are resolved.

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(7) We have not adequately explored the advantages which multilateral aid or increased participation in oceanographic research may offer in gaining support for our existing position.

(8) As a coastal state ourselves, we believe that our articles protect our coastal interests while allowing a reasonable degree of freedom of research. Once they understand our articles, most developing and developed countries should come to realize their own interest in a similar regime.

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H. The Deep Seabeds

In his May 23, 1970 Oceans Policy Statement, the President supported the establishment of an international regime and machinery to authorize and regulate deep seabed mining, and the collection of revenues from mining to be used primarily to promote the economic advancement of developing countries. The President also stated that he did not believe it to be either necessary or desirable to try to halt exploration and exploitation of the seabeds beyond a depth of 200 meters during the negotiating process. Most members of Congress and of the mining industry have supported this policy.

The UN General Assembly Declaration of Principles Governing the Deep Seabed, adopted without dissent, and the relevant General Assembly Resolution establishing the mandate of the Law of the Sea Conference, also call for the establishment of an international regime and machinery for the seabed beyond national jurisdiction in implementation of the common heritage of mankind. An earlier General Assembly Resolution, which the U.S. and others opposed, called upon all states and persons to refrain from exploiting the deep seabeds pending the establishment of the international regime and machinery.

In August 1970 the U.S. introduced draft articles in the form of a working paper pursuant to NSDM 62 and the President's statement. The fundamental thrust of those articles is the establishment of an international regime and machinery (usually called "the authority") for non-discretionary licensing on a first-come first-served basis, regulation to ensure sound environmental practices and to prevent claims to extraordinarily large areas of the seabed, control over regulations by a council in which the U.S. and other industrialized states have adequate voting protection and whose scope of discretion is also limited and defined by treaty, payments in the form of fees and royalties for mining rights, and compulsory settlement of disputes, including a right of action against organs of the international organization for exceeding their authority under the Treaty. For reasons related to our national security interests in using the deep seabeds, the role of both the organization and of individual states is carefully circumscribed so that neither has a basis for arguing that it has jurisdiction over all uses of all or any portion of the deep seabeds.

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The UN Seabed Committee has prepared alternative texts on a deep seabeds regime for the Law of the Sea Conference. With minor refinements, the U.S. has negotiated for three years the inclusion of texts contained in or derived from the basic portions of the 1970 U.S. draft. By and large, the U.S. alternative is the most oriented toward a market exploitation system with a minimum of regulation. What discretion of regulatory authority the proposed international organization would have, however, was intended to be guarded against by institutional arrangements giving the U.S. and other states with similar interests adequate voting participation to protect our important interests, as well as by carefully drawn treaty provisions, and compulsory dispute settlement.

In contrast, the fundamental thrust of developing country positions has been strongly in support of a highly centralized and powerful authority which would decide at what times and under what conditions the seabeds would be exploited. The approach has been a reflection of their attitude toward resource production on land. Recognizing that the capital and technology to exploit is in the hands of a few companies from developed states, they wish an organization representing the entire international community to participate in the technology and benefits from the exploitation of "the common heritage of mankind." The most prominent chosen instrument is an "Enterprise" (an exploitation arm of the international authority) which would have the exclusive right to exploit the deep seabeds, and could negotiate service contracts or joint ventures with the companies.

Deep seabed mining has been the subject of several studies by the UN Secretary General and others. While relatively little is known of the potential mineral wealth of the deep seabed, the present prospects for manganese nodule recovery have been widely publicized. Deep seabed exploitation in the reasonably foreseeable future is likely to occur only with respect to manganese nodules that are on or near the surface of the seabed. At present, the principal metals of commercial interest in the nodules are nickel, copper, and cobalt, although some companies have indicated that manganese is also of interest.

The comprehensive economic review concluded that the U.S. would benefit economically in a variety of ways from development of a domestically-based ocean mining industry, although the degree of benefit was not agreed upon. These would include more secure sources of supply for nickel, manganese, and cobalt (economy-

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cally recoverable reserves of all these metals are negligible in the U.S.), an improvement in the balance of payments deficit attributable to these metals, lower prices than might otherwise prevail, and increased technological capability and federal revenues associated with the new industry.

There is general agreement that the U.S. Delegation should be authorized, as a matter of tactics, to give the impression of a shift to a posture less accommodating than our current posture, to demands for broad international regulatory authority. The main issues relate to the substance of our ultimate approach. In the course of the economic review, a difference of opinion developed on whether a deep seabed authority is economically necessary or desirable and, if it is necessary or desirable for economic or other reasons, whether the underlying approach of the 1970 working paper already involved too much regulation.

It is recognized by all, however, that the U.S. has a significant economic interest in a legal order which permits timely, efficient development of seabed mineral resources and which assures security of investments and supply. It is also recognized that the U.S. has security interests in the deep seabed and waters above which are currently safeguarded by the 1958 Convention on the High Seas. These security interests must continue to be safeguarded by preventing a new regime which could permit natural resources claims to the seabed to expand into broader jurisdictional claims over all uses of areas of the seabed and possibly the superjacent waters. And it is recognized that at this late date any substantial shift of position by the U.S. toward a more restrictive deep seabeds position is likely to have a significant inhibiting effect on the entire Conference.

It is noted that all of the options presented assume that the common heritage principle may be implemented by provisions for revenues from deep seabed exploitation to go to the international community, principally for assistance to developing countries. It is also recognized that the Delegation should be authorized to support assistance for land-based producing nations which may be adversely affected by deep seabed exploitation.

1. Options Relating to the Basic Structure and Authority of the International Machinery for Deep Seabed Mining (Select one from Options a-d)
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In the light of the above, the following options are presented with respect to whether the U.S. should continue to support appropriately circumscribed international machinery for deep seabed exploitation or whether the U.S. should be authorized only to support a consultative and claims registry system relying largely on national actions taken under treaty obligations (or no international institutional arrangements at all).

Option a An international regime and machinery which would ensure access by interested U.S. firms to deep seabed mineral resources under reasonable conditions for exploitation. Consistent with these goals the Delegation should be authorized to accept an international authority with broad flexibility to regulate deep seabed mining so long as the U.S. and other countries which can be expected to supply the technology and capital for such mining exercise sufficient voting control to protect their interests.

Pros

(1) This option would provide maximum flexibility in achieving U.S. goals and would be the most negotiable.

(2) Adequate control with respect to the decision-making organs of the authority would provide almost the same functional protection as limitations on the institutional structure or power of the authority.

(3) The parameters of deep seabed mining for manganese nodules and adequate environmental protection from such mining are only poorly understood and as such it would be beneficial to U.S. interests to provide for substantial flexibility in the authority. At such time in the future as other mineral resources of the deep seabed become economically exploitable, substantial flexibility will be needed to effectively manage the new forms of exploitation.

Cons

(1) There are no significant economic conditions requiring that a legal order include an international authority which would manage the development of deep seabed resources. The more discretion which such an authority has the greater would be the potential for abuse.

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(2) An authority with substantial discretion to "manage" deep seabed mining could introduce substantial economic inefficiencies and additional transaction costs.

(3) Adequate voting control would not offer the same degree of protection for U.S. interests as a careful limitation of the structure and power of the authority.

(4) Adequate voting control may be as difficult to negotiate as limitations on structure and power and in any event such voting control could only ensure negative control to prevent unfavorable actions.

(5) The structure and power of the authority may largely determine whether the U.S. objectives of access to deep seabed mining under reasonable conditions can be realized.

(6) The implications of this option are not clear since it is drawn broadly.

Option b An international regime and machinery which would ensure access by interested U.S. firms to deep seabed mineral resources under reasonable conditions for exploitation. Such a regime and machinery would provide a stable investment climate for development of deep seabed mineral resources and would preclude discretion to discriminate among applicants or against U.S. or other deep seabed mining firms, or to introducing requirements not economically justified. In this respect the system would have the following functional attributes and safeguards:

-- there would be no discretion to choose among qualified applicants for mining rights or to deny an application that was properly certified by a sponsoring state (the system would operate on a first-come first-served basis with some automatic device such as competitive bidding used in the event of simultaneous applications for the same or overlapping sites);

-- there would be no power to control prices or production levels;

-- any international machinery would be kept small with discretion only as necessary to carry out specific authority entrusted to it;

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-- sponsoring states would certify compliance with qualifications for mining rights and would collect revenues due;

-- the treaty would protect non-resource uses of the seabed;

-- the treaty would set out the essential terms for mining within specified ranges satisfactory to protect U.S. interests, encourage development, and ensure stability of investment. These would include:

-- provision for financial obligations (taxation) set either specifically or within a narrow range and not so high as to deter orderly or timely development;

-- other terms and conditions essential for stable investment decisions;

-- the treaty would establish rules for the prevention of claims to extraordinarily large areas of the seabed;

-- the treaty would rely heavily on the role of sponsoring states for implementation of the system;

-- the information required of holders of mining rights would be limited to information essential to the exercise of the authority's functions;

-- the authority would only have discretion to propose reasonable regulations, on specified matters within specific treaty limits, including regulations to prevent interference with other uses and to protect the marine environment from deep seabed resource activities and deep drilling. These regulations would go into effect only after Council approval and only after one-third of the contracting parties did not object within a specified time;

-- the authority would be controlled in all significant respects by a Council in which the U.S. was assured of voting participation giving the U.S. and states with similar

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interests reasonable assurance that we would be able to prevent adverse decisions on important substantive issues;

-- the treaty would be drafted so as to require US agreement to be bound by treaty amendments;

-- the system would provide for the protection of the integrity of investments made under the system and for compulsory settlement of disputes arising under the system. This would include provision for states or concerned private entities to bring an action against the authority for exceeding its authority or for impairing the integrity of investments;

-- the label for the system is unimportant.

Pros

(1) The economic review concluded that such a system would be consistent with U.S. economic objectives. Moreover, such a system would not constitute a discretionary "resource management" system like some domestic regulatory agencies, but rather would be a strictly limited regime with functional authority only as clearly required by the nature of deep seabed mining.

(2) Such an approach could be a negotiable outcome. Tactically, we can appear to be backing a considerably more powerful organization than is in fact the case, thus reducing the ideological difficulties in the negotiation. This approach is understood by other key negotiators.

(3) Since this approach is consistent with the President's Oceans Policy Statement of May 23, 1970 (which supported creation of an international regime and machinery to authorize and regulate deep seabed exploitation in accordance with the common heritage principle), and is similar to the existing U.S. position, it would maintain U.S. credibility.

(4) Exclusive rights for deep seabed exploitation would be legitimized by an internationally recognized organization. As such, greater investor protections would be offered than under an approach relying principally on national legislation.

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(5) The existence of an international organization and assured influence over its decisions would protect our navigational and security interests from expanding jurisdictional claims.

(6) This system can impose conditions which will prevent states from claiming extraordinarily large areas of the seabed without the intention of commercial development in the reasonably near future, as for reasons of national pride or prestige. Such claims could pose the threat of expanding jurisdiction and could also retard development of mine sites by firms with the capacity to engage in such mining.

(7) International environmental standards would be uniformly applied to firms of all nationalities, thereby avoiding a competitive disadvantage to U.S. firms which, in the absence of such international standards, would be subject to more public pressure for high standards under domestic legislation or might shift their operations to a "flag of convenience" with lower standards and with a resulting loss of economic benefits to the US and environmental protection.

(8) Corporate and banking officials believe that legally recognized exclusive mining rights in a specific area for a specific time period are necessary to justify the large capital financing needed for deep seabed mining, despite the fact that poaching or claim jumping may not be likely. Because of variations in minerals content and other variables in nodules, mine sites are not fungible but rather require a refining process carefully tailored to each particular site. As such, for the substantial investment decisions required, it is imperative that there be maximum stability of expectations concerning exclusive rights to particular sites.

(9) This approach is supported by Resolutions of both houses of Congress and by the Public Advisory Committee on the Law of the Sea, including members representing the hard minerals industry.

Cons

(1) The economic review concluded that without reference to political or other non-economic factors there are no significant economic conditions requiring that a legal order include an international authority which would manage the development

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of deep seabed resources.

(2) For the foreseeable future, there are likely to be few firms relative to the availability of mine sites since nodule mining is capital intensive and potential mine sites are plentiful. Therefore, a system of exclusive mining rights for security of tenure can be provided without creating this type of international organization.

(3) Fears of expanding jurisdiction affecting navigation and security interests may be overemphasized and in any event do not require this type of organization.

(4) An international regulatory authority is not required to prevent states or firms from claiming an area without the intention to commence commercial development in the near future.

(5) We do not know whether deep seabed mining raises a substantial environmental problem. If it does, we can seek to accommodate environmental interests by general treaty provisions or in a forum outside of the Law of the Sea Conference. Furthermore, environmental standards might be used to indirectly effect price and production controls.

(6) This type of an international organization would create additional transaction costs for deep seabed mining. We have no experience with any international agency able to make binding regulations without the consent of member states. Any regulatory discretion, no matter how carefully circumscribed, might be used to discriminate against U.S. firms or to introduce requirements with no economic justification.

(7) There are so many specific conditions to be met before this system would be acceptable as formulated, and there is such a likelihood that all conditions would not be met, that we run a real risk of ending up with a system that does not adequately protect U.S. interests.

Option c An international authority limited to functioning as a claims registry, information center, and consultative forum which could make recommendations to contracting parties. This system would have the following functional characteristics:

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-- mining claims would be registered on a first-come first-served basis with competitive bidding used in the event of simultaneous applications for the same or overlapping sites;

-- the treaty would include general obligations on contracting states to ensure that registrants under their sponsorship would move to commercial production within a reasonable period of time, would not claim extraordinarily large areas of the deep seabed, would take reasonable measures to safeguard the environment, and would have reasonable regard for other uses of the deep seabed. States would be responsible for implementing specific measures to meet these obligations;

-- any revenue sharing obligation would be placed on sponsoring states which in turn would determine the best way to obtain the necessary revenues;

-- the system would provide for compulsory dispute settlement as a safeguard to ensure that national obligations were fulfilled.

Pros

(1) If adopted, such a system would provide minimum disincentives to development of deep seabed resources on an efficient basis and would eliminate discretion which might be used to discriminate against U.S. concerns or to introduce requirements which would foster economic inefficiency.

(2) The economic review concluded that there are no significant economic conditions requiring that a desirable legal order include an international authority which would manage the development of deep seabed resources (i.e., that such an authority was not the only way to enable the granting of exclusive exploration and exploitation rights to a mine site).

(3) Conflict among firms over mine sites is unlikely in view of the large number of primary mine sites, the small number of potential operating firms, and the high capital investment required. The option c approach would provide any needed machinery to protect firms' interests.

(4) Creation of a more powerful international organization and system could result in additional transaction costs for deep

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seabed mining.

(5) Our past experience with domestic regulatory agencies has not been good in terms of their effect on the structure of the industries regulated and their ability to make better decisions for the industry than could the marketplace.

(6) This approach provides a reliable way to have the flexibility over time to tailor supervision of deep seabed mining to actual conditions and changing technology.

(7) It avoids the difficult and more complicated approach of trying to negotiate precise limitations on and powers of the institution so that the institution will not have significant discretionary power capable of being abused.

(8) Economic and resource issues have taken on increasing prominence in foreign relations over the past four years. Consequently, it is clear that the U.S. should approach with some caution the creation of a system by which developing countries might exert substantial economic and political pressure on us. An international organization along the lines of Option c would be consistent with this need.

Cons

(1) Such a system is non-negotiable at any rational price.

(2) It is the opinion of the Special Representatives of the President for the Law of the Sea Conference, the Chairman of the NSC Interagency Law of the Sea Task Force, and the broad consensus with a few exceptions, of the Executive Committee of the Task Force and the Public Advisory Committee on the Law of the Sea, that a decision to support institutional arrangements without any binding rule-making procedures (option c) would be inconsistent with obtaining a timely multilateral agreement on the law of the sea and ocean uses and would amount to a decision not to seek such an agreement. As such, all our ocean law objectives, including our national security objectives, which can be best served by a timely and successful law of the sea treaty, would be seriously jeopardized.

(3) The President's Oceans Policy Statement of May 23, 1970, supported the creation of an international regime and machinery to authorize and regulate deep seabed exploitation. This position has been overwhelmingly endorsed by both Houses of Congress. In order to achieve the system outlined in Option c, the U.S. would have to adopt tactics which would seriously impair our credibility in the negotiations.

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(4) Since the economic review concluded that a strictly limited system along the lines of Option b would be consistent with U.S. economic objectives, there is no need to carry the substantial negotiating burden of a radical shift to this option.

(5) This system would not as effectively protect U.S. interests as Option b since the treaty obligations would, in effect, be less specific and as a result would merely transfer discretion to the compulsory dispute settlement machinery.

(6) Because of its almost complete reliance on national action, this system would tend to produce expanded national claims over non-resource uses highly prejudicial to our vital security interests with respect to the deep seabeds and the high seas above.

(7) This approach would play into the hands of those who wish to wreck or delay the Conference. The U.S. would be charged at home and abroad with violating the UN General Assembly Declaration of Principles which called for the establishment of an international regime and machinery to give effect to its provisions. Given the negotiating realities, such an approach would be interpreted (even by sophisticated observers) as a conscious decision by the U.S. to withdraw from or destroy the negotiations. This could well provoke retaliation against the U.S. on other issues in the negotiations or through unilateral claims or actions against U.S. mining companies.

(8) Though such an approach would effectively end U.S. influence in the negotiations, it might not prevent conclusion of a new comprehensive law of the sea treaty even without the U.S. In the absence of U.S. influence, the regime and machinery which emerge are likely to be damaging to vital

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U.S. security and other interests and might well, through time, become the governing legal regime and machinery binding on all states including the U.S.

(9) Our experience has generally been poor with respect to flag state obligations to impose adequate pollution control standards or standards nearly as high as Congress and the public wish to impose on U.S. operations. Consequently, this option is prejudicial both to our environmental interests, and to our economic interests in avoiding competitively disadvantageous requirements for U.S. operations.

(10) A general obligation for sponsoring states to guard against extraordinarily large claims does little to satisfy concerns that development countries or others will seek to claim large areas for speculation, for political and strategic reasons, or to reduce or delay seabed mining, thus restricting areas available for present mining operations and potentially interfering with the stability of exclusive claims.

(11) The Law of the Sea Conference is widely regarded as a test of multilateral diplomacy, and of the continuing viability of the UN system. This approach could seriously and unnecessarily damage our political relations with developing countries, such as Mexico, which have a strong commitment to the common heritage principle and the establishment of an organization. The effect is likely to bring us closer to a general "north-south" confrontation.

(12) Corporate and banking officials believe that legally recognized exclusive mining rights in a specific area for a specific time period are necessary to justify the large capital financing needed for deep seabed mining, despite the fact that poaching or claim jumping may not be likely.

(13) The U.S. mining legislation contemplated by this option is essentially the same as that contained in the nearly 100-year-old U.S. mining law. After extensive review, this Administration has submitted a new mining bill that fundamentally alters the earlier claims system. It will be difficult to support both without inviting charges of executive branch mismanagement.

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(14) Although not binding, the resolutions of any consultative organ would be a political reality, and would probably be far more prejudicial to us than any controlled rule-making procedure. It would be costly to persistently disregard such resolutions.

Option d No international authority for deep seabed mining.
This would mean:

-- any legal regime needed for establishing exclusive exploitation rights would be established under national legislation in accordance with general obligations in the Law of the Sea Treaty. Specific national systems in regard to this would be coordinated to the extent feasible through reciprocal agreements among those states licensing exploitation.

-- any regulations for environmental protection and any specific revenue sharing provision would need to be established in the treaty or negotiated separately.

-- the treaty would reflect general obligations on states on such matters as avoiding exploitation claims to extraordinarily large areas of the seabed, respecting other uses of the seabed, adherence to dispute settlement procedures, etc.

Pros

(1) Deep seabed mining could take place under the general framework of international principles without requiring creation of an international Authority.

(2) Creation of even a claims registry system could result in additional transaction costs for deep seabed mining.

(3) Conflict among firms over mine sites is unlikely in view of the large number of primary mine sites, the small number of operating firms, and the high capital investment required. Though there may be potential for political friction over deep seabed mining claims, we have made no systematic analysis of the potential for such conflict, the cost of such conflict should it occur, or

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the degree to which an international organization could avoid it.

(4) Even a claims registry system could, through time and subsequent treaty amendments, become a full-blown international organization.

Cons

(1) Such a system is non-negotiable at any rational price.

(2) It is the opinion of the Special Representative of the President for the Law of the Sea Conference, the Chairman of the NSC Interagency Law of the Sea Task Force and the broad consensus, with a few exceptions, of the Executive Committee of the Task Force and the Public Advisory Committee on the Law of the Sea, that a decision to support no institutional arrangements at all (Option d), would be inconsistent with obtaining a timely multilateral agreement on the law of the sea and ocean uses, and would amount to a decision not to seek such agreement. As such, all our ocean law objectives, including our national security objectives, which can best be served by a timely and successful law of the sea Treaty, would be seriously jeopardized.

(3) The President's Oceans Policy Statement of May 23, 1970 supported the creation of an international regime and machinery to authorize and regulate deep seabed exploitation. This position has been overwhelmingly endorsed by both Houses of Congress. For the U.S. to go back on this decision at this time would seriously impair our credibility domestically and internationally.

(4) Since the economic review concluded that a strictly limited system along the lines of Option b would not harm U.S. economic interests, there is no need to jeopardize the important U.S. objectives at stake in the negotiation by such a radical shift in position.

(5) Any system which does not provide for international recognition of exclusive mining rights would not provide the security of tenure necessary for a stable and efficient legal regime for deep seabed mining and could lead to retaliation against the U.S. firms by the majority of nations of the world which maintain that deep seabed minerals are the common heritage of mankind.

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(6) Because of its almost complete reliance on national action, this system would tend to produce expanded national claims over non-resource uses highly prejudicial to our vital security interests with respect to the deep seabeds and the high seas above.

(7) Such an approach would undermine the U.S. environmental interest in effective regulation of deep seabed mining and is likely to lead to higher environmental regulation of U.S. industry than foreign industry.

(8) Though such an approach would effectively end U.S. influence in the negotiations it might not prevent conclusion of a new comprehensive Law of the Sea Treaty, even without the U.S. In the absence of U.S. influence the regime and machinery which emerge are likely to be damaging to vital U.S. security and other interests and may well, through time, become the governing legal regime and machinery binding on all states including the U.S.

(9) Any effort to conclude reciprocal arrangements with the range of interested countries would be extremely difficult and could prove highly costly even if such an approach were politically feasible.

(10) The U.S. mining legislation contemplated by this option is essentially the same as that contained in the nearly 100-year-old U.S. mining law. After extensive review, this Administration has submitted a new mining bill that fundamentally alters the earlier claims system. It will be difficult to support both without inviting charges of Executive Branch mismanagement.

(11) Without any seabed organization, the UN General Assembly is likely to keep the issue on its agenda. While its resolutions on the deep seabeds would not be legally binding, this is close to the worst conceivable forum for considering deep seabed mining issues. Particularly because the issue is not perceived as one that turns largely on great power prerogatives, the political costs of persistently disregarding such resolutions could be high, and would affect our entire posture in the UN.

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2. Option concerning fallback authority to permit the authority to directly exploit the resources of the deep seabed under carefully safeguarded circumstances subject to full maintenance of a non-discretionary access system.

If the United States adheres to its long-standing position that there should be an appropriately structured international regime and machinery for the development of deep seabed mining under reasonable conditions which will ensure access by U.S. firms, an additional issue may be presented as to the U.S. position on whether the authority will be permitted to directly exploit deep seabed resources. The U.S. has repeatedly stated that it will not accept an exclusive operating monopoly for deep seabed mining. Such a monopoly would not serve the community interest in an efficient legal regime for deep seabed mining and would not ensure access by U.S. firms. The issue, then, is whether the authority would be permitted to directly exploit seabed resources within a system which simultaneously guarantees access by U.S. firms under reasonable conditions for exploitation. This could be structured either within a unitary system required to grant mining rights to all interested and qualified applicants or by establishing a joint system including an exploitative arm in parallel with but separate from a non-discretionary access system.

The economic review concluded that it is preferable that the authority not have power to directly exploit seabed resources but that if it does have such power, the direct exploitation operation should be insulated from administrative functions so that such operations would not receive a competitive advantage. A principal concern seems to be that an enterprise with operating authority might discriminate against exploiting firms in favor of itself. Another concern is that through time direct operating authority might lead to a monopoly on deep seabed mining. These potential concerns in permitting the authority to directly exploit might be reduced by insulating the exploitative arm from any regulatory authority, by minimizing the role and discretion of the authority, and by prohibiting the use of revenue sharing funds for financing of the direct exploitation operation. Under these carefully

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circumscribed conditions direct ~~exploitative~~ authority might not harm U.S. interests.

Though it would seem preferable not to permit direct exploitation, a U.S. position which permitted direct exploitation conditioned on acceptance of a non-discretionary access system might provide a possible middle ground between the U.S. position and the advocates of an exclusive operating enterprise. Such a position should be used only should it become clear that agreement to giving an international authority legal power to directly exploit is necessary to reach agreement on the deep seabed mining issue.

Option: If the Chairman of the Delegation, in consultation with the Chairman of the Task Force and the senior representative of the agencies concerned, determines that it is necessary in order to achieve the principal U.S. deep seabed negotiating objectives, the Delegation is authorized to support, in the context of a deep seabeds regime that meets the principal U.S. objectives, a power for the authority to directly exploit seabed resources, provided that all direct exploitation functions are insulated from administrative functions so as to avoid discrimination in favor of the direct exploitation operation and provided that international revenues generated from other operations may not be used to underwrite the direct exploitation operation. Such a direct exploitation operation should have the following attributes:

- the system ensures non-discretionary access by interested U.S. firms to deep seabed minerals under reasonable conditions for exploitation;

- the exploitation operation would have authority to enter the market directly or through service contracts or joint ventures;

- the direct exploitation operation would be required to compete for licenses or contracts and in all other respects on equal terms with all other licensees or contracting parties, whether states, group of states, or private companies;

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-- there would be no obligation for states to participate in or financially contribute to the exploitation operation;

-- to avoid a conflict of interest leading to discrimination in favor of the direct exploitation operation there would be a careful separation of operating functions from administrative or licensing functions. This would include a separation of personnel and chains of responsibility;

-- international revenues from seabed resources could not be used in any way to subsidize the direct exploitation operation;

-- to avoid creation of a monopoly on deep seabed mining any direct exploitation operation would be subject to the same rules and regulations as all other operations including the rules and regulations to prevent extraordinarily large claims to the deep seabed;

-- the direct exploitation operation would be subject to compulsory dispute settlement at least to the same extent as all other operations and the authority itself.

Pros

(1) Support for a right to establish a parallel direct exploitation operation would greatly enhance the negotiability of the U.S. approach for non-discretionary access.

(2) Support for this position would be close to our existing position since under the current U.S. proposal the developing countries could form a joint venture to compete on an equal basis with other operators.

(3) This may satisfy the desire of at least some developing countries to participate in the exploitation of the "common heritage" while minimizing the role of direct exploitation and preventing interference with private exploitation.

(4) Our principal objections to direct exploitation as it is usually described are its potential exclusion of

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U.S. firms from the market, its potential monopoly character, the possibility that such exploitation arm would become an inefficient producer through politicization of its internal structure, and the potential for discrimination in favor of the direct exploitation operation. This proposal, however, does not exclude U.S. firms nor establish a monopoly and it minimizes the risk of conflict of interest which might lead to discrimination. To the extent such a direct exploitation operation is inefficient, it will compete poorly or go out of business.

(5) A developing country interest in a direct exploitation operation which must operate under the same rules and regulations may reduce the pressure for broad or economically undesirable regulation.

(6) Since there will be many more first-generation mine sites for manganese nodules than could be profitably exploited for the near future, the existence of what is in effect one more firm in the market would not harm U.S. interests.

(7) If the U.S. cannot negotiate and support this middle outcome, a less acceptable regime may become part of the Treaty without significant U.S. input and over our objections. We would then be faced with a decision whether to refuse to accept the Treaty for this reason and lose benefits achieved on other issues. It is not clear, however, that a carefully structured direct exploitation operation would significantly harm U.S. interests.

(8) The non-discretionary access of U.S. firms to deep seabed resources under reasonable conditions for exploitation would in no way be impaired.

Cons

(1) No matter how carefully constructed, there is some risk of discrimination by the authority in favor of a direct exploitation operation.

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(2) U.S. support for an international organization engaging in direct commercial activities would be a dangerous precedent which might be more difficult to control in other settings.

(3) If an enterprise were structured to enable it to operate through joint ventures or contracts with private firms, it is unnecessary for it also to have the authority to enter into direct exploitation.

(4) Such direct exploitation operations would provide additional competition for U.S. firms interested in deep seabed mining.

(5) The full implications of this approach are unclear.

3. Options concerning methods of funding an international authority (Select a or b)

Again assuming that the U.S. will continue to support the creation of appropriate international machinery with respect to deep seabed mining, the question of the source of funding for the machinery may be an issue. The U.S. approach thus far has been to allow the authority to use funds generated by licensed exploitation activity (e.g., license fees) for the payment of the administrative expenses of the authority and to permit a first call against international revenues for the same purposes. Until sufficient funds are generated in this way, the authority may borrow and states may agree to give sympathetic consideration to requests for loans. A question has been raised whether to continue along these lines or to shift to support for a funding system along the lines of present United Nations funding.

Since the arguments in favor of one option are in essence the arguments against the other, only "pro" arguments will be presented under each.

Option a: The U.S. should continue to oppose financing the Authority by state contributions, and should continue to support exclusive financing of administrative expenses

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from international revenues from seabed mining, with borrowing authority in early years before sufficient international revenues are generated. (This would not of course preclude voluntary state contributions, e.g., a one-time capital contribution to get the authority started.)

Pros

(1) If income that would otherwise be used for development assistance must be diverted to pay for administrative costs, the developing countries are less likely to support a large bureaucratic structure. In fact, a number of LDCs have already made speeches urging a small efficient organization in order to protect benefits for all mankind.

(2) The history of UN funding suggest that the U.S. Government will almost automatically pay a large and perhaps unfair share under a state contribution system, and that such contributions do not buy greater influence and may even foster resentment.

(3) From an economic point of view, it makes more sense for the deep seabed operations to pay the cost of the necessary machinery for their benefit than it does for all taxpayers to, in effect, subsidize the industry.

(4) The theory of U.S. "control" through financial contributions implies U.S. withdrawal or violation of its assessment obligations if it is dissatisfied. Since the deep seabeds organization would be established only as part of a comprehensive Treaty that also protects our security and non-deep seabed interests, such a course would both violate our Treaty obligation and be extremely dangerous for our general oceans interests, including the deep seabed mining rights of our nationals.

Option b: The U.S. Delegation is authorized to support the position that funding of an international organization for deep seabed mining shall be only by state contributions in accordance with United Nations practice.

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Pros

(1) Since the U.S. would be a major contributor (up to 25% of the funding), we might have greater influence over the organization.

(2) Since the organization would be dependent on contributions, it would have a greater interest in avoiding actions that abuse its authority.

(3) A self-financing organization has unpredictable implications.

(4) The funding of the organization would be subject to the U.S. appropriations process.

4. Computing financial obligations for the generation of international revenues from deep seabed mining

Under all approaches implementation of the principle of "the common heritage" requires a sharing of revenues generated from deep seabed mining for international community purposes. The financial obligations required to generate international revenues should not be so high as to interfere unduly with the orderly development of the resource. In order not to impair stable conditions for investment, such revenue sharing requirements should be either specifically set in the treaty or should be set within a well-defined range in accordance with specified criteria.

In establishing a basis for revenue sharing it is important to utilize an approach which will be simple and easily administered, easily understood in the negotiation, and applicable to socialist as well as capitalist and mixed systems. Similarly the approach should seek to avoid introducing distortions in market decisions and interfering with orderly development.

In utilizing a percentage royalty on production, it is preferable that the royalty not apply to the value added as a result of the transportation, refining, and marketing operations. It is difficult, however, to assign a value to manganese nodules at the mine site.

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Accordingly it may be necessary to use a technique of valuation roughly aimed at value at the mine site. One such approach might be to value the manganese nodules at the mine site by computing the amount of each metal of commercial interest and assigning a particular percentage royalty based on a percent of the current market value of each metal. Another technique would be to assign a particular low percentage of the value of the metals as refined. This approach would be self-adjusting as market forces raised or lowered metal prices.

Another possible basis for revenue sharing would be a percentage sharing in kind of the production of manganese nodules at the mine site. Production sharing, however, could introduce additional administrative costs and could, unless carefully structured, permit price manipulation by withholding from the market or dumping on the market large quantities of stored nodules. It also gives the ISRA the producers' share of increased revenue when the price of commodities increases. Since production sharing may be an arrangement preferred by developing countries, however, it would seem preferable to retain some flexibility to accept this approach if the Chairman of the Delegation in consultation with the Chairman of the Task Force and the senior representatives of the agencies concerned determines it to be necessary and if any such system is carefully structured to reduce administrative costs and the potential for abuse. Production sharing is not a preferable basis for revenue sharing, however, and should be viewed only as a fallback position. There may also be other bases for computing international revenues, such as rents, a percentage of profits, a two-tier system, or some other system, all of which would only be acceptable if they were so structured as to satisfy the criteria elaborated in this section.

Recommendation

That the Chairman of the U.S. Delegation in consultation with the Chairman of the Task Force and senior representatives of the agencies concerned is authorized to support the computation of financial obligations for the generation of international revenues from manganese nodule mining in seabed areas beyond national jurisdiction as to royalty on production at an economically viable rate not to ex-

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ceed 10% of the value of the manganese nodules, or computed pursuant to some other acceptable method. We will be studying the relevant factors to determine a more precise range of figures. The criteria in NSDM 62 for determining the rate of financial obligations would continue to apply, namely "...a level that will make a substantial contribution to development, render participation in the Treaty attractive to the necessary signatories, and at the same time encourage exploration and exploitation of the seabed."

This recommendation would give the Delegation maximum flexibility to support any basis for computing financial obligations for manganese nodule mining that satisfies our objectives. If a range of rates were to be set out in the treaty, rather than a specific rate, then the Delegation would support an upper limit consistent with this section.

5. Allocation of International revenues

It may be helpful to set out the principal approach the Delegation should take on the functional uses of seabed revenues for international community purposes, whether derived from deep seabed or coastal seabed exploitation, although in this area the Delegation should retain maximum flexibility. Aside from the divergence of views on use of seabed revenues as an offset against administration expenses of the international authority, the U.S. approach has been that revenues should go for general development assistance, assistance for enumerated types of oceans-related projects, and adjustment assistance. We are flexible on the question of whether the treaty should specify a priority among these purposes.

With respect to adjustment assistance, the Delegation should take the view that such assistance should be available to countries whose foreign exchange earnings from particular mineral exports suffer significantly as a result of seabed mineral exploitation. Eligibility might be certified by a competent international agency (perhaps IMF), and the assistance provided would be time-limited and confined to overcoming difficulties caused by this

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new source of supply. With these provisos, there would be flexibility on the terms of assistance offered.

Ocean users' assistance might be available to maritime countries or groups of countries within a regional or sub-regional framework which have demonstrated need to improve their marine science capacity. Such assistance would be limited to relatively small-scale technical assistance. Similarly, the Delegation might support limited assistance for community oceans projects (e.g., straits' dredging) or community efforts to ensure protection of the marine environment. The Delegation should be free to decide on the basis of tactical considerations whether to propose that a fixed small percentage (possibly 5 percent) of seabed revenues be set aside for such ocean users' assistance, after the administrative costs of the international authority (if included in the U.S. position) have been met, or whether it would be preferable for the U.S. to remain silent on this issue.

In discussing the use of seabed revenues for international development assistance, the Delegation should support sound principles and practices of development assistance in order to assure optimum utilization of this new source of funds. This suggests that the U.S. Delegation should favor a system of funds distribution which makes maximum use of multilateral development agencies to program such assistance. However, in order to preserve negotiating flexibility, the Delegation would also be authorized to agree to direct allotments to recipients. With respect to allocation of funds, if the U.S. takes a position on these issues, it should support an approach by which eligibility of countries to receive general development assistance funds would be established on the basis of broadly conceived criteria, but possibly including some appropriate preferences for the least developed or landlocked and shelflocked states.

With respect to all of these issues concerning allocation of revenue sharing funds, the Delegation should retain flexibility to determine in the light of U.S. development assistance goals the proposals and tactics which would best serve U.S. interests in the Law of the Sea negotiations.

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I. Compulsory Settlement of Disputes

We do not believe any change is necessary in our instructions regarding compulsory dispute settlement and we continue to regard it as extremely important in achieving a settlement in general and in relation to the satisfactory resolution of specific issues. However certain clarifications and adjustments are needed, as recommended below:

1) Scope of dispute settlement and procedures

We have specifically proposed compulsory dispute settlement for all parts of a Law of the Sea Treaty except those dealing with the territorial sea and straits. We introduced a new proposal last summer on procedures for such dispute settlement. Most states have not, however, noticed the omission of a reference to dispute settlement in our territorial sea and straits articles, and we have not made the point explicit while studying the issue. We have reached the conclusion that the underlying problem as it relates to compulsory dispute settlement in straits relates to warships and state aircraft, that this problem is not limited to the territorial sea and straits, and that if such vessels and aircraft are excluded, it would be preferable to take the position that our compulsory dispute settlement proposal applies to all parts of the Treaty. We can accomplish this with some fairly simple adjustments in the language of our dispute settlement proposal, and can surface the idea as part of our efforts to achieve Soviet support for our position.

Recommendation

That compulsory dispute settlement should apply to all parts of the Law of the Sea Treaty, including straits and the territorial sea, but dispute settlement would not apply to any dispute regarding a vessel or aircraft entitled to sovereign immunity under international

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law without the express consent of the flag State.*
In the negotiation we will continue to protect other
military uses of the ocean, but not necessarily through
specific treaty language.

2) Suits by private parties

Under the U.S. proposal, only states can normally sue each other. There are two exceptions: (1) an emergency procedure by a vessel owner to secure release of his vessel where the Treaty requires prompt release (that is not an adjudication on the merits) and (2) arbitration of investment disputes on the continental margin, where a foreign company that has contracted with a coastal state may bring it to arbitration, if the state of nationality of the company has not brought an action itself and if the company has not waived its right in the investment agreement with the coastal state. States do not like to be sued by individuals outside their own courts, and we believe even these limited exceptions will be hard to negotiate. We would not wish to place more burdens on an already difficult compulsory dispute settlement negotiation, and accordingly are opposed to getting out front with supporting any further provision for private suits against states in an international tribunal.

However, if other delegations propose further provisions in this regard without evoking major opposition, and if the Chairman of the Delegation in consultation with the Chairman of the Task Force and senior representatives of the agencies concerned determines that this would not jeopardize our ability to achieve compulsory dispute settlement, we could support an expansion of the instances in which an international tribunal could hear cases between states and private parties.

*The effect would be that the U.S. would be able to bring an action, should it so desire, based on interference by another state with our public vessels or state aircraft, but other states would not have a right to bring an action against the U.S. based on the activities of U.S. public vessels and state aircraft.

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On the other hand, there may be less resistance to private suits against international organizations. U.S. environmentalists strongly desire an independent right to ensure compliance with international environmental requirements through compulsory dispute settlement, as they fear the U.S. and other states might have political constraints on doing so.

We have already proposed that companies engaged in deep seabed operations be able to sue the Seabed Authority. We believe we could support the general idea of a suit by private environmentalists (or possibly UNEP or UN recognized non-governmental international environmental organizations) against the Seabed Authority to ensure compliance with environmental requirements. We are uncertain of the negotiability of such an idea, but see no compelling reasons not to advance it, and would accordingly plan to do so. However, no formal article would be introduced until we had a reasonable assessment of the reaction.

As for states, we have already proposed that they establish domestic procedures for environmental suits, and this is about as far as we think it is possible to go.

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SUMMARY OF EXISTING POSITIONS AND NEGOTIATING AUTHORITY

This summary outlines existing U.S. positions and negotiating authority. It is intended as an aid to the reader and is not intended to alter existing authority.

The Territorial Sea

The U.S. has proposed a 12-mile maximum limit for the territorial sea conditioned on a satisfactory regime for straits. We have made no proposals to alter innocent passage or the regime of the territorial sea, with the exception of transit rights in straits in accordance with our straits proposal. (NSDM 122; August 3, 1971 Article).

Straits

The U.S. straits article proposes that vessels and aircraft in transit through straits used for international navigation enjoy the same freedom of navigation and overflight, for the purposes of transit, as they have on the high seas. The article authorizes coastal states to establish corridors suitable for transit by vessels and aircraft. (NSDM 122; August 3, 1971 Article). The U.S. has described this as a limited right to transit a strait, not a right to conduct other activities.

The U.S. delegation is authorized to support international safety and pollution standards in straits. We have proposed mandatory respect for IMCO traffic separation schemes in areas where they apply, that state aircraft transiting straits shall normally respect ICAO standards, recommended practices, and procedures as they apply to civil air on the high seas and strict liability for damage caused by failure to respect the IMCO or ICAO rules; treaty language to this effect has not been introduced. The delegation is instructed to reserve on the question of upper monetary limits for strict liability. It is authorized to support mandatory adherence to ICAO standards, recommended practices, and procedures as they apply to civil aircraft on the high seas with an exception for special circumstances of operational necessity, if

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State and DOD representatives agree that the existing formulation is inadequate. (NSDM 177).

With respect to enforcement, the report of June 20, 1972, approved by NSDM 177, stated the following:

"Under our straits proposal, a vessel that is not in transit in a strait is immediately subject to arrest or, in the case of warships, may be asked to depart for violation of coastal State laws and regulations. We believe the coastal States would logically have similar rights of implementation and enforcement of internationally agreed traffic safety and pollution standards in their territorial sea in straits."

Efforts to form a broader common front and a common understanding on language with states having similar interests, and attempt to ascertain how an exception for straits less than six miles wide would enhance our straits objectives, a position of non-opposition to the USSR (except for its treatment of the Strait of Tiran) and other articles not incompatible with our interests, were authorized by NSDM 225.

We are authorized to make it clear that our territorial sea and straits objectives are basic elements of the President's Oceans' Policy and that any Treaty to which the United States could be expected to become a party would have to accommodate these objectives. (NSDMs 122 and 177). Statements to this effect have been made.

While in the last analysis the issue is one of substance and not labels, we are continuing our opposition to the innocent passage in straits proposals of our opponents and innocent passage as currently defined. (NSDM 225).

Archipelagos

While maintaining our non-recognition position, we are authorized to undertake, without commitment, private exploratory discussions with Indonesia and other archipelago states indicating U.S. willingness to cooperate in considering possible formulations of archipelago claims that might satisfactorily accommodate U.S. marine resource and navigation interests, including those presented in the report of

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June 20, 1972 (resource jurisdiction with preservation of the residual high seas rights and free transit through and over international straits; corridors for free transit). (NSDM 177).

Pollution from Vessels

We have proposed articles providing for exclusively international standards for vessel-source pollution, but with a flag state and port state right to impose higher standards. Warships and other vessels entitled to sovereign immunity would not be required to adhere to those standards. We are authorized to accept, but have not proposed, higher coastal state standards in the territorial sea outside straits. (NSDM 225).

The report of July 1, 1973, proceeded on the assumption of coastal state enforcement authority in the territorial sea, based on the provisions of the existing Territorial Sea Convention. We made no specific proposal in this regard. Beyond the territorial sea, we proposed a system of high seas monitoring coupled with port state enforcement, as well as coastal state enforcement authority in cases of imminent danger or pursuant to a dispute settlement order against a flag state for gross and persistent failure to apply international standards. We proposed no zone or precise geographic limitation on the exercise of these coastal state rights. (NSDM 225).

Compulsory dispute settlement and liability for unreasonable enforcement actions have been proposed.

Seabeds Pollution

We have consistently proposed and supported adherence to international standards to prevent pollution from seabeds exploration and exploitation on the continental margin and the deep seabeds. (NSDMs 62, 122, 157). We are authorized to propose that a standard of strict liability apply to clean-up costs and pollution damage from seabeds exploration and exploitation. (NSDM 177). Compulsory dispute settlement has been proposed.

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Resources Generally

The report approved by NSDM 177 authorized us to ensure that other delegations understand that the establishment by international agreement of limited coastal state jurisdiction over fisheries and over the mineral resources of the continental margin subject to international standards and compulsory dispute settlement, as well as reasonable and secure investment conditions for U.S. private industry on the deep seabed, are basic U.S. objectives, and to correct any mistaken impression that we are willing to sacrifice our basic resource objectives in order to achieve our territorial sea and straits objectives. Statements to this effect have been made.

Coastal Seabed Economic Area (Continental Shelf)

Our new articles reflect the evolution of the substance of our authorized positions of exclusive coastal state rights over exploration and exploitation, subject to international standards and compulsory dispute settlement to protect other uses, prevent pollution from resource related activities, drilling and installations affecting its economic interests, protect foreign investment, and provide for some revenue-sharing for international community purposes. (NSDMs 62, 122, 157, 225).

We are authorized to support a two-hundred-mile outer limit of the coastal seabed economic area, and an alternative depth or geological limit to embrace the continental margin where it extends beyond two-hundred miles. (NSDMs 122, 157, 225). We are authorized to support twelve miles alone, or in combination with two-hundred meters, as the inner limit of the zone, provided that revenue sharing could apply to a smaller area (e.g. seaward of 200 meters) or exclude existing leased areas if the zone begins at twelve miles. (NSDM 225). No specific area or amount for revenue-sharing has been specified in the Coastal Seabed Economic Area articles. The relevant criteria expressed in NSDM 62 (also applicable to the deep seabeds) are as follows: "These royalties should be at a level that will make a substantial contribution to development, make participation in the treaty

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attractive to the necessary signatories, and at the same time encourage exploration and exploitation of the natural resources of the seabeds."

Deep Seabeds

Under NSDM 62, the international regime would contain "international rules concerning pollution, liability, protection of navigation, work requirements, scientific research and other freedoms of the seas, settlement of dispute, expropriation, and similar matters," with "internationally agreed royalties... disbursed to an international community fund, principally for purposes of economic assistance to developing countries that are participants in the treaty" and "international machinery will be established to license and regulate exploration and exploitation of natural resources and collect the international royalties from this area." The substance of this position was incorporated in the President's May 1970 Oceans Policy Statement, and the U.S. presented a detailed draft Treaty in August 1970 based on this guidance.

Alterations in the Treaty that do not go to the substance of our position were authorized in NSDM 122. We are authorized to continue opposing an international operating agency and measures that would eliminate protection against developing country control of the Council, but could indicate developing countries should have greater control over the disposition of international revenues (NSDM 157). We are authorized to place primary emphasis on achieving practical protection of our interests rather than on cosmetics and terminology (NSDM 172). While making it clear that price and production controls adversely affect U.S. interests, we are authorized to pursue some sort of assistance arrangements by the international authority in the event of adverse economic impact on land producers (NSDM 177).

Fisheries

NSDM 177 states our basic fisheries authority as follows: "The delegation should continue to seek international acceptance of U.S. fisheries positions that (1) give the coastal state effective regulatory control over coastal species and over salmon throughout their migratory range on the high seas, subject to international standards and review regarding conservation and maximum utilization of coastal and anadromous

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fisheries, and (2) that provide for international regulation of tuna fishing." In pursuit of these objectives, authority to indicate privately U.S. willingness to support a possible fisheries compromise based on a fixed zonal approach is included (NSDM 177). The report approved by NSDM 225 indicated that we would not wish a zone to be narrower than 200 miles. NSDM 225 authorized "package" discussions with coastal states along these lines, in which we would not indicate opposition to a 200-mile economic zone if our substantive interests were accommodated.

With respect to coastal and anadromous species, reasonable coastal state licensing and fees (NSDMs 122 and 157), special reciprocal and other arrangements between states in a region irrespective of non-discrimination requirements (NSDM 157), coastal state designation of regulatory areas (NSDM 157), gradual phase out or compensation in connection with traditional distant water fishing (NSDMs 122 and 157) is authorized.

With respect to tuna, NSDM 122 authorizes the delegation to explore proposals for accommodation, including reasonable licensing arrangements, but it should not take an affirmative position without referral to Washington. The report approved by NSDM 157 indicated the acceptability of reasonable and non-discriminatory licensing and user fees established by regional or international organizations for tuna.

Sedentary species of fish (e.g. King Crab) would be subject to coastal state control. They could be treated either as seabed resources in the coastal seabed economic area, or as non-migratory fisheries or a separate category under the U.S. fisheries proposal (NSDM 157).

Compulsory settlement of disputes has been proposed.

Scientific Research

In areas of coastal state resource jurisdiction beyond the territorial sea, we are authorized to propose (and have largely proposed) that research be subject to notice to the coastal state, a right of coastal state participation, availability of all data and samples, open publication of results, technical assistance in conducting research and interpreting the significance of data and results, reasonable regard for other uses of the marine environment, and conformity with

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international environmental standards and coastal state drilling regulations. (NSDMs 177 and 225). We are authorized to support projects that will give developing states the ability to interpret and use scientific data, to augment their scientific research expertise, and to have research equipment available, funded by revenues from the seabeds, by developed state contributions through multilateral funding programs, or both. (NSDM 177). Our deep seabeds proposals provide for international cooperation, availability of data and samples, open publication of results, and adherence to international environmental and drilling standards.

Provisional Application

We have proposed provisional application of the deep seabeds and fisheries portions of a Treaty, and indicated our willingness to consider provisional application of other aspects of an LOS Treaty; we are authorized to support provisional application of other aspects of our LOS Treaty package, in the light of its effect on our substantive objectives and relevant tactical circumstances, including our interests in promoting signature and prompt ratification of the entire Treaty package. (NSDM 225).

Dispute Settlement

Our substantive position with respect to all our proposals regarding areas beyond the territorial sea includes compulsory dispute settlement. We are authorized to place major emphasis on compulsory dispute settlement as a general principle applicable to all disputes arising under the Law of the Sea Treaty (subject to the sovereign immunity of warships, other government vessels and state aircraft, and leaving our options open regarding compulsory dispute settlement in the territorial sea and straits). (NSDM 225).

As to procedures, we are authorized to propose a new Law of the Sea Tribunal, specialized commissions, arbitral panels, or a combination of these. (NSDM 225). We have in essence proposed discretion to choose procedures with an LOS Tribunal available in the absence of agreement on other procedures and in cases of urgency, and with arbitration for private investment disputes.

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REPORT
of the
UNITED STATES DELEGATION
to the
THIRD UNITED NATIONS CONFERENCE ON LAW OF THE SEA
ORGANIZATIONAL SESSION
NEW YORK, NEW YORK
December 3-15, 1973

Submitted to the SECRETARY OF STATE

John R. Stevenson
Ambassador
Chairman of the Delegation

March 14, 1974

REPORT
OF THE
UNITED STATES DELEGATION
TO THE
THIRD UNITED NATIONS CONFERENCE ON LAW OF THE SEA
ORGANIZATIONAL SESSION
NEW YORK, NEW YORK
December 3-15, 1973

The inaugural session of the Third United Nations Conference on the Law of the Sea took place December 3-15, 1973 in New York. The session was devoted to matters of Conference organization and procedure, including the election of officers, adoption of the agenda and Rules of Procedure.

The session marked the opening of formal law of the sea negotiations following three years of preparatory work. The 25th UN General Assembly (1970) had decided to convene the Law of the Sea (LOS) Conference in 1973 and designated as the preparatory body its Committee on the Peaceful Uses of the Seabed and Ocean Floor Beyond the Limits of National Jurisdiction. The Seabed Committee subsequently held six preparatory sessions, the final meeting in the summer of 1973.

The 27th General Assembly (1972) decided to convene two Conference sessions, with provision for additional work, if necessary. The first session was scheduled for two weeks in November/December 1973, to be followed by an eight-week substantive session in Santiago, Chile in the spring of 1974.

The 28th General Assembly on November 16, 1973, fixed December 3-14, 1973 as the dates for the first (organizational) session of the LOS Conference. It also expanded the second (substantive) session to 10 weeks -- from June 20-August 29, 1974 -- and changed its venue from Santiago, Chile to Caracas, Venezuela.

AGENDA

The Conference adopted the following agenda on a no-objection basis on December 3, 1974:

1. Opening of the Conference by the Secretary-General
2. Election of the President
3. Adoption of the agenda of the Conference
4. Adoption of the Rules of Procedure
5. Appointment of the Credentials Committee
6. Election of Chairmen of the four Main Committees
7. Election of the Chairman of the Drafting Committee
8. Election of Vice-Presidents
9. Appointment of other members of the Drafting Committee
10. Organization of work
11. Consideration of the subject-matter referred to in paragraph 3 of General Assembly resolution 3067(XXVIII) of 16 November 1973
12. Consideration of a decision, if necessary, to convene a further session or sessions of the Conference, to be submitted to the General Assembly for approval pursuant to paragraph 4 of General Assembly resolution 3067(XXVIII) of 16 November 1973

13. Adoption of a convention dealing with all matters relating to the law of the sea, pursuant to paragraph 3 of General Assembly resolution 3067(XXVIII) of 16 November 1973, and of the Final Act of the Conference
14. Signature of the convention and the Final Act

PARTICIPATION

A. Countries

The following countries were represented by official delegations. The number of accredited delegates is indicated in parenthesis after the name of each country. One hundred and twenty six countries attended the first session of the LOS Conference: Afghanistan(4); Albania(3); Algeria(3); Argentina(4); Australia(5); Austria(4); Bahamas(4); Bahrain(2); Bangladesh(3); Barbados(2); Belgium(3); Bhutan(3); Bolivia(2); Brazil(2); Burma(3); Bulgaria(5); Byelorussia(3); Canada(8); Central African Republic(3); Chad(2); Chile(4); China(5); Congo(3); Costa Rica(3); Cuba(3); Cyprus(1); Czechoslovakia(3); Dahomey(2); Democratic Peoples Republic of Korea(1); Democratic Yemen(3); Denmark(5); Dominican Republic(3); Ecuador(6); Egypt(5); El Salvador(3); Equatorial Guinea(2); Fiji(2); Finland(5); France(4); German Democratic Republic(4); Germany, Federal Republic of(8); Ghana(3); Greece(5); Guatemala(3); Guinea-Bissau(1); Holy See(2); Honduras(3); Hungary(3); Iceland(4); India(4); Indonesia(4); Iran(3); Iraq(4); Ireland(3); Israel(4); Italy(4); Ivory Coast(5); Jamaica(3); Japan(8); Jordan(5); Kenya(1); Khmer Republic(4); Lebanon(1); Liberia(4); Libyan Arab Republic(4); Luxembourg(3); Madagascar(3); Malaysia(3); Mali(2); Malta(4); Mauritania(1); Mexico(3); Monaco(2); Mongolia(3); Morocco(2); Nepal(4); Netherlands(6); New Zealand(3); Nicaragua(3); Niger(1); Nigeria(5); Norway(6); Oman(2); Pakistan(5); Panama(3); Paraguay(3); Peru(6);

Philippines(5); Poland(5); Portugal(5); Qatar(2);
Republic of Korea(3); Republic of Vietnam(1); Romania(3);
Senegal(2); Sierra Leone(5); Singapore(2); Somalia(2);
South Africa(15); Spain(4); Sri Lanka(3); Sudan(2);
Swaziland(3); Sweden(3); Switzerland(2); Syrian Arab
Republic(3); Thailand(5); Togo(3); Trinidad and Tobago(3);
Tunisia(6); Turkey(3); Uganda(3); Ukraine(3); USSR(8);
United Arab Emirates(1); United Kingdom(5); United Repub-
lic of Tanzania(4); USA(31); Uruguay(4); Venezuela(8);
Western Samoa(1); Yemen(2); Yugoslavia(4); Zaire(3);
Zambia(4).

Note: The United States does not recognize the
Republic of Guinea-Bissau.

B. Observers

The Council for Namibia

C. International Organizations

The following specialized agencies and other inter-
national organizations were present. The number of
delegates from each is listed in parenthesis following
the name of the organization:

FAO(1)
IBRD/IDA(2)
ILO(2)
IMCO(1)
UNESCO(1)
WHO(2)
IAEA(1)
UNEP(1)
Council of Europe(1)
European Communities(2)

UNITED STATES DELEGATION

Representatives

The Honorable
John R. Stevenson
Ambassador
Special Representative of the President
for the Law of the Sea Conference
(Chief of Delegation)

The Honorable
John Norton Moore
Chairman, the NSC Interagency Task Force on the
Law of the Sea and Deputy Special Representative
of the President for the Law of the Sea Conference
(Deputy Chief of Delegation)

Alternate Representatives

Martin F. Herz
Deputy Assistant Secretary
Bureau of International Organization Affairs
Department of State

The Honorable
Donald L. McKernan (Dec. 5-7)
Ambassador
Special Assistant to the Secretary for
Fisheries and Wildlife and Coordinator of
Ocean Affairs
Department of State

Stuart H. McIntyre
Staff Director
NSC Interagency Task Force on the Law of the Sea
Department of State

Bernard H. Oxman (Dec. 3-7)
Special Assistant to the Special Representative
and Assistant Legal Adviser for Ocean Affairs
Office of the Legal Adviser, Department of State

Alternate Representatives--continued

Herbert K. Reis
Legal Adviser
United States Mission to the United Nations

Stuart P. French (Dec. 3-10) (Did not attend)
Director, Law of the Sea Task Force
International Security Affairs
Department of Defense

The Honorable
Howard W. Pollock (Dec. 3-5; Dec. 10-15)
Deputy Administrator
National Oceanic and Atmospheric Administration
Department of Commerce

Leigh S. Ratiner
Director, Office of Ocean Resources
Department of the Interior

Congressional Advisers

The Honorable
Clifford P. Case (Did not attend)
United States Senate

The Honorable
Ernest F. Hollings (Did not attend)
United States Senate

The Honorable
Warren G. Magnuson (Did not attend)
United States Senate

The Honorable
Claiborne Pell
United States Senate

The Honorable
Ted Stevens (Did not attend)
United States Senate

Advisers

C. Paul Ake, Commander, U.S.N. (Dec. 6-11)
Office of the Joint Chiefs of Staff
Department of Defense

Burdick H. Brittin (Dec. 3-4; Dec. 10-14)
Deputy Coordinator of Ocean Affairs
and Special Assistant to the Secretary for
Fisheries and Wildlife
Department of State

David E. Cook
Office of the General Counsel
Council on Environmental Quality
Executive Office of the President

John A. Dugger (Dec. 11-15)
International Security Affairs
Department of Defense

John D. Fox
International Affairs Division
Office of Management and Budget

John K. Hartzell
Director, Office of Trade Negotiations
Department of Treasury

Franklin O. McCord (Secretary of Delegation)
Bureau of International Organization Affairs
Department of State

Robert E. McKew, Commander, U.S.C.G.
United States Mission to the United Nations

Max K. Morris, Rear Admiral, U.S.N. (Dec. 3-5; Dec. 12-15)
Joint Chiefs of Staff Representative for
Law of the Sea Matters
Department of Defense

Advisers -- continued

Myron Nordquist (Secretary of Delegation, Technical)
NSC Interagency Task Force on the Law of the Sea
Department of State

R. Tucker Scully
Bureau of International Organization Affairs
Department of State

George Taft (Dec. 6-9)
National Oceanic and Atmospheric Administration
Department of Commerce

Mary B. West (Dec. 10-14)
Office of the Legal Adviser
Department of State

Norman A. Wulf
Office of General Counsel
National Science Foundation

Paul A. Yost, Captain, U.S.C.G.
United States Coast Guard
Department of Transportation

CONFERENCE ORGANIZATION

The first session of the Conference agreed to the following officers, committees and representatives on committees:

President

Sri Lanka (Hamilton Shirley Amerasinghe)

Vice-Presidents

Poland
USSR
Yugoslavia

9.

Vice-Presidents -- continued

Algeria	China
Egypt	Indonesia
Liberia	Iran
Madagascar	Iraq
Nigeria	Kuwait
Tunisia	Nepal
Uganda	Pakistan
Zaire	Singapore
Zambia	
Bolivia	Belgium
Chile	France
Dominican Republic	Iceland
Peru	Norway
Trinidad and Tobago	United Kingdom
	United States

Rapporteur General

Jamaica (Kenneth Rattray)

General Committee

Algeria	China
Cameroon (Engo)	Cyprus
Egypt	Fiji (Nandan)
Kenya	Indonesia
Liberia	Iran
Madagascar	Iraq
Nigeria	Japan
Sudan (Hasan)	Kuwait
Tunisia	Nepal
Uganda	Pakistan
Zaire	Singapore
Zambia	Sri Lanka (Amerasinghe)

10.

General Committee -- continued

Australia (Mott)
Belgium
Federal Republic of Germany
France
Iceland
Norway
Turkey
United Kingdom
United States

Bolivia
Brazil
Chile
Colombia
Dominican Republic
Jamaica (Rattray)
Peru
Trinidad and Tobago
Venezuela (Aguilar)

Bulgaria (Yankov)
Czechoslovakia
German Democratic Republic
Poland
USSR
Yugoslavia

Committee I

Chairman

Cameroon (Paul Engo)

Vice-Chairmen

Brazil
German Democratic Republic
Japan

11.

Committee I -- continued

Rapporteur

Australia (Charles Mott)

Committee II

Chairman

Venezuela (Andres Aguilar)

Vice-Chairmen

Czechoslovakia

Kenya

Turkey

Rapporteur

Fiji (Satya Nandan)

Committee III

Chairman

Bulgaria (Alexander Yankov)

Vice-Chairmen

Colombia

Cyprus

Federal Republic of Germany

Rapporteur

Sudan (Abd'al Majid Hasan)

12.

Drafting Committee

Chairman

Canada (Alan Beesley)

Ghana
Lesotho
Mauritius
Mauritania
Sierra Leone
Tanzania

Afghanistan
Bangladesh
India
Malaysia
Philippines
Syria

Argentina
Ecuador
El Salvador
Mexico

Italy
Netherlands
Spain
United States

Romania
USSR

Credentials Committee

Austria (Chairman), Chad, China, Costa Rica, Hungary,
Ireland, Ivory Coast, Japan and Uruguay.

13.

WORK OF THE CONFERENCE

The first session of the Third United Nations Law of the Sea Conference resulted in adoption of an agenda, agreement on committee structure and election of Conference officers and committee representatives. Agreement on Conference Rules of Procedure was not completed.

Opening of the Conference

The U.N. Secretary-General, Kurt Waldheim, opened the LOS Conference, conveying his recognition of the critical importance of its work and his hopes for its success. Pursuant to the Secretary-General's proposal, the Conference elected its President, H.S. Amerasinghe of Sri Lanka, by acclamation. Ambassador Amerasinghe had served as Chairman of the U.N. Seabed Committee since its establishment.

Ambassador Amerasinghe secured adoption of the Conference agenda on a no-objection basis and proposed that the Conference consider first the related issues of electing officers and establishing committees, followed by consideration of the Rules of Procedure. He sought to obtain consensus on these matters through informal consultations among the regional groups. To that end, he held frequent meetings with the chairmen of the five regional groups -- African (AF), Asian (AS), Latin American (LA), Eastern European (EE), and Western European and Other (WEO) -- along with the U.S. Representatives.

Election of Officers and Establishment of Committees

The informal consultations under Ambassador Amerasinghe's guidance reached agreement on the establishment of the following Conference structure: A General Committee, a Drafting Committee, three Main Committees -- corresponding to the three Subcommittees of the Seabed Committee -- a Credentials Committee and a position of Conference Rapporteur General.

14.

Likewise, there was agreement that each Main Committee would have a Chairman, three Vice Chairmen and Rapporteur, each from a different regional group. Chairmanship of Committee I was assigned to the African Group, of Committee II to the Latin American Group, of Committee III to the Eastern European Group and of the Drafting Committee to the Western European and Other Group. Main Committees were to be open-ended in composition and the Credentials Committee was to consist of nine members -- based on the U.N. General Assembly model.

Tentative agreement emerged on a 48-member General Committee and a 23-member Drafting Committee. Serious disagreement, however, arose over the allocation of seats on the General and Drafting Committee among the regional groups. A principal issue was whether and how to accommodate United States candidacies for both the General and Drafting Committees. The African, Asian, Latin American and Eastern European regional groups agreed that the U.S. should be counted in the Western European and Other quota of seats, with the understanding of their regional Chairmen, shared by most members of their respective groups, that the U.S. should be represented on both Committees. The Western European and Other Group pointed out that the U.S. had not been treated as a member of their group in the past and that accommodating the United States would place the Western European and Other Group below parity with other regional groups.

The United States agreed that it was not a member of the Western European and Other Group and sought seats on both Committees in keeping with established practice in the United Nations General Assembly and at previous international conferences. Some States were, however, opposed to what they termed the "automatic" inclusion of permanent Security Council members on important bodies and the Peoples Republic of China introduced a formal proposal that no State participating in the Conference had the right to dual representation. In this case this meant that no State had a right to be on both the General and Drafting Committees.

15.

Protracted consultations over the impasse on the allocation of seats continued until December 12. Ambassador Amerasinghe then resolved the dual representation issue by obtaining agreement to the following formula: "No State shall as of right be represented on more than one main organ of the Conference." (Emphasis added).

The Conference also accepted a proposal, from a suggestion by the Canadian Representative, that the Chairman of the Drafting Committee not -- as originally envisaged -- be a member of the General Committee. This proposal created a vacancy in the Western European and Other quota on the General Committee which could be used to accommodate the U.S.

Even so, the Western European and Other Group could not achieve a consensus on a slate of candidacies for the Vice President positions assigned to it and the United States. Voting by secret ballot, therefore, took place on the following eight candidacies for the six positions: Norway, Belgium, France, the United Kingdom, Iceland, Italy, Greece and the United States. the results of the voting were: France-109(elected), The United States-107(elected), Norway-104(elected), Belgium-100(elected), the United Kingdom-99(elected), Iceland-96(elected), Italy-95(not elected), Greece-73(not elected).

Prior to the voting on the Vice Presidencies, the representatives of the United Kingdom and France announced their intention to withdraw their candidacies for the Drafting Committee if elected as Vice Presidents. Their withdrawal left the United States, Canada, Italy, Spain and the Netherlands as the only candidates for the five positions allocated to the Western European and Other Group plus the United States on the Drafting Committee. The five candidates were therefore elected by acclamation.

In addition to the Conference President, the principal Conference Officers elected were: Mr. Paul Engo (Cameroon), Chairman of Committee I; Ambassador

Andres Aguilar (Venezuela), Chairman of Committee II; Ambassador Alexander Yankov (Bulgaria), Chairman of Committee III; Mr. Kenneth Rattray (Jamaica), Conference Rapporteur General; and Ambassador Alan Beesley (Canada), Chairman of the Drafting Committee. All were elected by acclamation except Ambassador Beesley who was elected by a margin of 81 to 54 votes over Ambassador Ralph Harry of Australia. A complete list of Conference Officers is included in the section on Conference Organization above.

Rules of Procedure

The time required to resolve the committee allocation dispute left only two days -- later extended to three -- to consider the Rules of Procedure. Given the number of issues raised by the Rules and the disparity of view on them among Conference participants, their adoption prior to the conclusion of the first session proved impossible.

Draft Rules for consideration by the Conference had been prepared by the United Nations Secretariat. The Secretariat had drawn upon rules employed at previous international conferences, but included several innovations designed to restrain the abuse of power by the majority, such as provisions to prevent premature voting. Formal amendments to the draft Rules of Procedure were tabled by a number of participants, including the United States. The United States amendments call for voting majorities -- whether simple or two-thirds -- to be of "Representatives of States participating in the Conference" rather than of Representatives "present and voting". The draft Rules of Procedure and the amendments to them tabled during the first session are attached as an Annex.

An issue equal in importance to the formal Rules was the execution of a "Gentleman's Agreement" that had been adopted by the United Nations General Assembly concurrently with the Conference resolution. The Gentleman's Agreement stated:

"Recognizing that the Conference at its inaugural session will adopt its procedures,

"including its rules regarding methods of voting and bearing in mind that the problems of ocean space are closely interrelated and need to be considered as a whole and the desirability of adopting a Convention on the Law of the Sea which will secure the widest possible acceptance;

"The General Assembly expresses the view that the Conference should make every effort to reach agreement on substantive matters by way of consensus; that there should be no voting on such matters until all efforts at consensus have been exhausted; and further expresses the view that the Conference at its inaugural session will consider devising appropriate means to that end."

Disagreement arose both over the formal voting provisions in the Rules and over treatment of the Gentleman's Agreement. Some developing countries, led by Chile, Colombia and Tanzania, argued that the Law of the Sea Conference should operate under the "classic" conference voting arrangements -- simple majority in Committee and two-thirds in Plenary -- and sought deletion from the draft Rules of many, though not all, of the devices designed to prevent abuse by the majority. At the other extreme, the Soviet Union pressed for Conference decisions by consensus, with a nine-tenths majority required in Plenary, if formal voting were necessary. The Soviets proposed a requirements of concurrence by all regional groups before proceeding to such formal voting.

The meaning of the Gentleman's Agreement itself was a source of controversy. Tanzania, apparently speaking for a number of States, argued that the adoption of the Rules of Procedure would execute the Gentleman's Agreement and terminate its existence. The United States, among others, maintained that the Gentleman's Agreement was clearly intended to be applicable throughout the Conference and strongly urged its re-endorsement in a form of a separate Conference resolution.

18.

Finally, Conference participants were split over how to adopt the Rules of Procedure. Most delegations, supported by the Conference Secretary-General (United Nations Legal Counsel Stavropoulos) advocated their adoption by a simple majority. The United States, the United Kingdom, France, the Union of Soviet Socialist Republics and Japan disagreed, urging that the importance of the Rules for the eventual success of the Conference required their approval by a majority as close to consensus as possible.

Intensive efforts at compromise were pursued up to the last moment, and some narrowing of differences over the Rules of Procedure and the Gentleman's Agreement was achieved. Time ran out, however, before these efforts were successful.

Faced with the impossibility of extending the session beyond December 15, Ambassador Amerasinghe closed the session and secured agreement to the following proposal for future work:

- (a) That he, as Conference President, would hold informal consultations with sponsors of amendments and other interested representatives to further seek consensus on the Rules of Procedure from February 25 to March 1, 1974, with further consultations of this nature to be held if necessary.
- (b) That additional amendments to the Rules, if any, should be submitted by January 31, 1974;
- (c) If the informal consultations result in agreement on the Rules, that such agreement be put to the second session of the Conference in Caracas for endorsement.
- (d) That, whether or not consensus is achieved on the Rules of Procedure, there be a deadline of June 27, 1974, for their adoption, if necessary by a formal vote.

The Conference accepted Ambassador Amerasinghe's proposal on a no-objection basis. It also agreed to an

Argentine proposal that the United Nations General Assembly Rules of Procedure apply to the adoption of the Conference Rules, if a vote becomes necessary in Caracas. These Rules specify a simple majority for the adoption of Conference Rules, unless the Conference decided -- equally by a simple majority -- to designate the matter as an important question requiring a two-thirds majority for approval. The United States and France warned of the implications of adopting the Conference Rules of Procedure by only a simple majority. Ambassador Amerasinghe, however, noting that only several delegations were opposed to the Argentine proposal stated his intention to put the matter to a vote if necessary. He thereby obtained Conference approval for the use of the General Assembly Rules of Procedure until the Conference agrees on its Rules.

FUTURE MEETINGS

As indicated above, the Conference President Amerasinghe will hold informal consultations on the Rules of Procedure in the period prior to the second session of the LOS Conference. The second (substantive) session of the Conference will take place in Caracas June 20-August 29, 1974. Depending upon the outcome of the informal consultations starting the last week in February, all or part of the first week of the Caracas session will be devoted to final adoption of the Rules of Procedure.

CONCLUSIONS

From the perspective of the United States, the results of the first session of the Third United Nations Conference on the Law of the Sea were mixed. The delegation believes that the Conference selected excellent leadership in the Conference President, Committee Chairmen and Rapporteur General. Officers of this calibre can make a major contribution to the success of the Conference.

The United States attained its objective of membership on both the General Committee and the Drafting Committee. The difficulty in achieving this result stemmed

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not so much from opposition to the United States as from disagreement over the method of accommodating our position. The manner in which the issue was resolved, however, indicates that the status of the five permanent members of the Security Council and the United States relationship to the Western European and Other Group will likely be controversial issue at future international conferences.

The United States consistently worked for the convening of an early Conference and it was disappointing that insufficient time remained after resolution of the committee allocation issue to permit adoption of the Rules of Procedure. At the same time, Ambassador Amerasinghe's plan for future work on the Rules of Procedure is clearly preferable to what would have been a premature and confused vote on that issue under the stress of the final day of the session.

UNITED STATES DELEGATION RECOMMENDATIONS

The delegation recommends that every effort be made to facilitate agreement on the Conference Rules of Procedure prior to the opening of the second session of the Conference. Satisfactory resolution of the Rules of Procedure issues prior to the Caracas session would not only make more time available for substantive work there, but also could contribute to a productive atmosphere for the start of substantive negotiations.

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Summary of Proposed Instructions for the Third
U.N. Conference on the Law of the Sea
Prepared by the Chairman, NSC Interagency Task Force on the
Law of the Sea

A. U.S. Interests in a Comprehensive Ocean Law Treaty

The U.S. has important interests which would be served by a comprehensive ocean law treaty. Among them are:

(a) protection of navigation in the territorial sea and beyond, particularly the protection of freedom of navigation and overflight on the high seas and in the areas adjacent to the territorial sea which may be subject to coastal state resource jurisdiction.

(b) protection of unimpeded transit through and over straits used for international navigation;

(c) coastal state resource jurisdiction to explore and exploit mineral resources of adjacent continental margin areas;

(d) a fisheries regime which will place coastal and anadromous fisheries under coastal state management with at least preferential rights in the coastal state, which will place highly migratory species under regional or international management and which, to the extent consistent with these goals, will protect traditional fisheries;

(e) a stable legal regime for deep seabed mining which will ensure access by U.S. firms to deep seabed mineral resources under reasonable conditions for exploitation;

(f) a jurisdictional basis for sound environmental protection of the world's oceans and appropriate legal obligations and procedures to protect the marine environment and the living resources of the oceans;

(g) a regime for marine scientific research which will encourage rather than discourage the conduct of research and the dissemination of results;

(h) a regime which will protect high seas uses including SOSUS which is a vital element in our arms control equation with the U.S.S.R;

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(i) appropriate international standards applicable to coastal state resource jurisdiction which will promote efficient utilization and conservation of the resources and accommodation with other uses and interests;

(j) a widely accepted and reasonably definite legal regime coupled with adequate machinery for the compulsory settlement of disputes in order to minimize conflict and promote stability of expectations and adherence to treaty requirements;

(k) a regime which will protect the integrity of agreements and investment relating to the development of ocean resources;

(l) an agreement which will implement the concept of the common heritage by establishing an international legal regime in the common interest of all nations and by providing revenues for international community purposes, particularly assistance to developing nations;

(m) a regime which will establish exclusive coastal state rights and coastal state duties with respect to the construction, operation and use of deep water ports and other structures that affect coastal state economic interests beyond the territorial sea;

(n) an agreement which will prevent and remove, where consistent with overall U.S. objectives, present or future bilateral ocean use problems damaging to U.S. relations with particular countries, for example, fisheries disputes and archipelago problems; and

(o) a timely agreement which will promote these objectives at the earliest possible time.

With the possible exception of broadly extending U.S. resource jurisdiction over continental margin mineral resources, all of these interests are endangered by a continuation of the present trend toward unilateralism and can only be adequately protected in the context of a satisfactory comprehensive oceans law treaty.

(1) Some fundamental objectives

It is of course true that a Treaty which institutionalizes a bad ocean regime may be worse than the present drift to unilateralism. Accordingly, it is imperative that the U.S. provide strong leadership toward a good ocean regime. It also follows that the U.S. should not merely accept any Treaty no matter what the substantive content. In this connection

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the U.S. Delegation has repeatedly made it clear that the U.S. will not accept a Treaty which does not protect unimpeded transit through and over international straits or which does not adequately protect navigational and other high seas freedoms in areas beyond the territorial sea. Similarly, it has been made clear that the U.S. will not accept a Treaty that does not protect U.S. basic resource interests and does not provide for a deep seabed regime with access by U.S. firms under reasonable conditions for exploitation of deep seabed mineral resources. The U.S. has also emphasized the importance which it attaches to compulsory dispute settlement procedures and to an enduring Treaty which will be widely adhered to and respected.

The absence of a discussion above or any statement by the Delegation that a particular interest is of great importance does not necessarily indicate that the interest is of lesser importance. For example, because of a strong trend in the negotiations toward substantially broadened coastal state resource jurisdiction as well as the probability that a balanced posture on resource issues will better promote all U.S. objectives, the Delegation has not found it necessary to make similar statements with respect to ensuring coastal state control of continental margin mineral and coastal fishery resources. Another example is that for security and tactical reasons, we have avoided statements concerning our interest in the protection of SOSUS. Any final decision on the acceptability of an overall Treaty must, of course, take into account not only interests publicly stated to be vital to U.S. acceptance but also the overall accommodation of all U.S. objectives. Similarly, any such decisions should realistically compare the proposed resolution of a particular issue with the probable resolution of the issue in the absence of a comprehensive agreement.

(2) Alternative and fallback strategies

The full range of U.S. oceans objectives can be best served by a timely and satisfactory comprehensive oceans law Treaty. Bilateral and limited multilateral approaches, which have been the norm in recent years, have not adequately protected U.S. oceans interests. Many issues such as the breadth of the territorial sea require clear resolution if we are to achieve stability of expectations. A bilateral or multilateral approach, however, would require agreement with a large number of states and the resulting politically and economically costly hodgepodge of relationships would be unsatisfactory. Other issues, such as the protection of coastal fisheries, may require agreement with states which have little incentive to agree except in an overall comprehensive oceans law settlement.

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Moreover, several individual multilateral agreements, perhaps following the 1958 model, would not adequately protect U.S. ocean interests. Important U.S. interests extend over a broad range of issues and a separate treaty approach risks excluding some of those issues. Such a separate approach would also provide less leverage to the U.S. on a number of important objectives, particularly U.S. navigational and coastal fishery objectives, than would a comprehensive single convention. Finally, separate treaties are likely to create a confusing pattern of legal relations between parties to the new conventions and the 1958 Geneva Conventions and could not as satisfactorily contribute to the needed stability of expectations and avoidance of conflict in oceans uses.

If, of course, it does not prove possible to conclude a timely and successful comprehensive oceans law Treaty, the U.S. may wish to pursue alternative strategies for particular issues, at least until such time as a successful comprehensive Treaty proves feasible. In this connection, the U.S. has publicly stated that if agreement is not reached by the end of 1975 it will consider alternative national legislation as a means of providing a satisfactory investment climate and environmental regulation for U.S. firms interested in deep seabed mining. Similarly, we may need to examine alternative strategies for protection of U.S. coastal fishery stocks if a timely agreement is not concluded. Protection of these or other U.S. interests, if in fact possible, would require agreement among interested and like-minded states if there were to be a complete failure of the Conference.

(3) The role of the Caracas session of the Conference

The United States should attempt to move the Caracas session as close as possible to explicit or implicit agreement compatible with our substantive interests. A timely Conference is important both because of U.S. fishery and deep seabed interests in an early agreement and because of the need to reach agreement before pressures for unilateral action overtake multilateral opportunities. As such, it is important that we approach Caracas prepared to reach final agreement. Informal talk of a 1976 session may be a self-fulfilling prophecy unless the U.S. takes vigorous action to promote negotiations in Caracas. In this respect our overall posture on all issues will be important in signaling to other nations whether Caracas will be a meaningful session. At the same time, it remains as important as ever clearly to communicate vital U.S. interests which must be accommodated if the Conference is to be successful. Few things would be more damaging than a

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failure of other nations accurately to perceive vital U.S. interests and the U.S. determination to protect those interests.

B. Substantive Recommendations and Options

1. The Deep Seabeds (Section H)

Although the deep seabeds discussion appears in Section H in the proposed instructions, it is discussed at this point because of the potentially great overall impact of the U.S. deep seabeds position on the negotiations. That impact is analyzed in the pros and cons to the options presented below.

In his May 23, 1970 Oceans Policy Statement, President Nixon supported the establishment of an international regime and machinery to authorize and regulate deep seabed mining. A principal purpose of that proposal is to provide a stable, internationally agreed legal regime for the mining of the deep seabeds. The U.S. has supported a non-discretionary access system designed to ensure access by U.S. firms to deep seabed minerals under reasonable conditions for development. This policy has been endorsed by both Houses of Congress and has been closely coordinated with the Soviet Union, the United Kingdom, France and Japan during more than three years of preliminary negotiations.

Option a, the first of four options open to the U.S., provides for an international regime and machinery which would ensure access by interested U.S. firms to deep seabed mineral resources under reasonable conditions for exploitation consistent with these goals. The Delegation would be authorized to accept an international authority with broad flexibility to regulate deep seabed mining, so long as the U.S. and other countries, which can be expected to supply the technology and capital for such mining, exercise sufficient voting control to protect their interests. The arguments for this option are that it would give the U.S. maximum flexibility to achieve its goals and, since the regime would be controlled by countries which supplied the technology and capital for the mining, protect U.S. interests almost as well as limitations on the authority's powers. The arguments against the option are that there are no significant economic conditions which would require an international authority to manage deep seabed resource development, that such an authority would introduce substantial economic inefficiencies and additional transaction costs, and that limitations on the authority's powers would protect U.S. interests better than adequate voting control for the U.S. which would only ensure negative control to prevent unfavorable actions and would probably be as difficult to negotiate as limits on power.

Option b provides for an international regime and machinery which would ensure access by interested U.S. firms to deep seabed mineral resources under reasonable conditions for exploitation. Such a regime and machinery would both provide a stable international investment climate for development of deep seabed

mineral resources and preclude a management regime in which there would be discretion to turn down an application for mining rights properly certified by a sponsoring state or to introduce requirements not economically justified. The international machinery would not have the power to control prices or production levels and would only have strictly limited discretion to propose regulations on a few specified matters which would go into effect after Council approval and after submission to states. The Treaty itself would set out the essential terms for mining with specific ranges to protect U.S. interests, encourage development, and ensure stability of investment. The authority would be controlled, in all significant respects, by a Council in which the U.S. would be assured of voting control with other similarly interested states sufficient to prevent adverse decisions on important issues. The Treaty would protect non-resource uses, establish rules for the prevention of claims to extraordinarily large areas, require U.S. agreement to be bound by Treaty amendments, and provide for the integrity of investments and the compulsory settlement of disputes.

The arguments for this option are that it would provide a stable international investment climate for deep seabed mining and would be consistent with U.S. economic objectives as determined by the economic review. It would protect non-resource uses and interests concerning the seabed (including SOSUS) ; provide protection against large areas being withdrawn by states from commercial development and against threats to U.S. navigational and security interests from expanding coastal state jurisdictional claims; be consistent with the President's Ocean Policy Statement of May 23, 1970, the Resolutions in both Houses of Congress, and the views of the Public Advisory Committee on the Law of the Sea (including members of the hard minerals industry); and provide for legally recognized exclusive mining rights in a specific area which corporate and banking officials believe to be necessary to justify the large capital investments required, despite the fact that poaching or claim jumping may not be likely, since factors like variations in mineral content in nodules make mine sites non-fungible and require a refining process carefully tailored to each site.

The arguments against the option are that there are no economic conditions which require an international authority to manage the development of deep seabed resources; a system of exclusive mining rights for security of tenure can be provided without creating this type of international organization since there are few firms capable of engaging in mining (which is capital intensive) and potential sites are plentiful; an international organization would create

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additional transaction costs for deep seabed mining; we have no experience with an international organization able to make regulations binding without the consent of each state; and we run a real risk of creating a system that does not adequately protect our interests.

Option c provides for an international authority limited to functioning as a claims registry, information center, and consultative forum which could make recommendations to contracting parties. Mining claims would be registered on a first-come first-served basis with competitive bidding, if necessary. The Treaty would include general obligations on contracting states to ensure that registrants under their sponsorship would move to commercial production within a reasonable period of time, would not claim extraordinarily large areas of the deep seabed, would take reasonable measures to safeguard the environment, and would have reasonable regard for other uses of the deep seabed. States would be responsible for implementing specific measures to meet these obligations; any revenue sharing obligations would be placed on sponsoring states which in turn would determine the best way to obtain the necessary revenues; and the system would provide for compulsory dispute settlement as a safeguard to ensure that national obligations are fulfilled.

The arguments for this option are that it would provide minimum disincentives to development of deep seabed resources on an efficient basis and eliminate discretion which might be used to discriminate against U.S. concerns; that there are no significant economic conditions requiring an international authority to manage the development of deep seabed resources; that there would probably be no conflict over mine sites since there are a large number of primary mine sites, a small number of potential operating firms, and a requirement for high capital investment; that this approach would avoid the more complicated negotiations of precise limitations on the authority's power; that the authority created under this approach would provide the flexibility to deal with changing conditions and technology; and that a more powerful organization could result in additional transaction costs.

The arguments against this option are that it is the opinion of the Special Representative of the President for the Law of the Sea Conference, the Chairman of the NSC Interagency Task Force on the Law of the Sea, the broad consensus of the Executive Committee, with a few exceptions,

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and the private sector Advisory Committee on the Law of the Sea that a decision to support this approach would be inconsistent with obtaining a timely multilateral agreement on the Law of the Sea and would amount to a decision not to seek such agreement, thus jeopardizing all our ocean law objectives, including national security objectives; that it would seriously impair U.S. credibility in view of the President's Oceans Policy Statement of May 23, 1970 and our consistent support in three years of negotiations for a non-discretionary access system as outlined in option b; that it would not protect U.S. interests as well as option b, since the Treaty obligations would be less specific and result in the transfer of more discretion to the compulsory dispute settlement machinery; that it would not provide the requisite security of tenure since there would be no international agreement; and that, since the economic review concluded that a strictly limited system along the lines of option b would not harm U.S. economic interests, there is no reason to jeopardize U.S. objectives by such a radical shift in position.

Option d would provide no international authority for deep seabed mining. This would mean that any legal regime needed for creating exclusive exploitation rights would be established under national legislation in accordance with general obligations in the Law of the Sea Treaty. Specific national systems would be coordinated to the extent feasible through reciprocal agreements among those states licensing exploitation; that any regulations for environmental protection and any specific revenue sharing provisions would need to be established in the Treaty or negotiated separately; and that the Treaty would reflect general obligations on states on such matters as, among others, avoiding exploitation claims to extraordinarily large areas of the seabed, protecting other uses of the seabed and adherence to dispute settlement procedures.

The arguments in favor of this option are that deep seabed mining could take place under the general framework of international principles without creating an authority; that conflict over mine sites is unlikely in view of the large number of primary sites; and that even a claims registry system could result both in additional transaction costs and, eventually, in a fullblown international organization.

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The arguments against it are that it is the opinion of the Special Representative of the President for the Law of the Sea Conference, the Chairman of the NSC Interagency Task Force on the Law of the Sea, the broad consensus of the Executive Committee, with a few exceptions, and the private sector Advisory Committee on the Law of the Sea, that a decision to support this approach would be inconsistent with attaining a timely multilateral agreement on the Law of the Sea and would amount to a decision not to seek agreement, thus jeopardizing all our ocean law objectives including national security objectives; that it would not provide the requisite security of tenure; that it would seriously impair U.S. credibility in view of the President's Oceans Policy Statement of May 23, 1970 and our consistent support in three years of negotiations for a non-discretionary access system as outlined in option b; that, since the economic review concluded that an Option b-type system would not harm U.S. economic interests, there is no reason to jeopardize U.S. objectives; and that it would end U.S. influence in the negotiations which might then proceed to conclude a Treaty inimical to U.S. interests.

Exploitation by the Authority

An additional option would authorize support, in the context of a satisfactory deep seabeds regime, for power in the authority to directly exploit seabed resources. The direct exploitation operation would be insulated from the administrative arm, required to compete on equal terms with other licensees for licenses, and subject to the same rules and regulations and to compulsory dispute settlement. International revenues from seabed resources could not be used to subsidize the direct exploitation operation, and there would be no obligation for states to financially support it.

The arguments for the option are that it would enhance the negotiability of a non-discretionary access system and U.S. commercial interests would not be harmed. The arguments against this option are that there would always be a risk of discrimination by the authority in favor of the direct exploitation operation and that U.S. support for an international organization engaged in direct commercial activities would establish a dangerous precedent.

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Funding by the Authority

The question of funding for the machinery may be an issue at the Conference. Option A presents the existing U.S. position under which the U.S. has stated its support for the authority to use funds generated by licensed exploitation activity for the payment of the authority's administrative expenses and to permit a first call against revenue for the same purposes. Under Option B the U.S. would shift its support to a funding system based on state contributions in accordance with UN practice.

The arguments for option A are that if the authority is financed by direct contributions, the U.S. will in all likelihood end up paying a major share; that taxpayers should not subsidize the industry; that there is no basis for the presumption of greater U.S. influence under this system; and that the bureaucracy will be much larger, since developing countries will not be using income earmarked for them for administrative costs.

The arguments for option B are that since the U.S. would be a major contributor (up to 25%) it would have greater influence over the organization; that a self-financing organization has unpredictable implications; and that, since the organization would be dependent on contributions, it would have a greater interest in avoiding actions that abuse its authority.

Revenue Rate and Base

Regardless of which options are selected, it is agreed that the international portion of the revenues generated from deep seabed mining beyond national jurisdiction will be used for international purposes. Various approaches may be employed to determine the revenues to be distributed.

It is recommended that the U.S. Delegation be authorized to support a sharing of revenues from manganese nodule mining in areas beyond national jurisdiction as a royalty on production, at a rate not to exceed 10% of the value of the manganese nodules, or computed pursuant to some other acceptable method such as a carefully circumscribed system of production sharing. Within this framework, the criteria in NSDM 62 for determining the rate of financial obligations at "a level that will make a substantial contribution to development...and at the same time encourage exploration and exploitation of the seabeds" would continue to apply.

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Allocation of Revenues

Finally, the U.S. approach with respect to the use of revenues is that revenues should be employed for general development assistance, assistance for enumerated types of oceans-related projects, and adjustment assistance. In each instance, flexibility should be retained to determine, in light of U.S. development assistance and other ocean law goals and tactical considerations, which positions would best serve U.S. interests at the Conference.

2. The Territorial Sea (Section B)

It is widely accepted that the Convention will include agreement on a 12-mile territorial sea. Aside from establishment of the breadth of the territorial sea and agreement on the straits question, the U.S. is opposed to reopening the regime of the territorial sea as defined in the 1958 Convention. If, however, that regime is reopened, the U.S. should work for a more favorable innocent passage regime in the territorial sea.

3. Straits (Section C)

The U.S.'s major opponents on the straits issue -- Spain, Egypt and the other Arab states, Indonesia, Malaysia, the Philippines, and Tanzania -- support a restrictive innocent passage-type regime, a regime which is unacceptable to the U.S. because of its subjectivity and its prohibitions on submerged transit and overflight. By working with states that have similar straits interests, we hope to form a broad common front on the question of which straits must remain covered by a regime more liberal than innocent passage and what the nature of the regime should be.

Recommendation

It is recommended that the U.S. be authorized to indicate privately to other delegations with similar straits interests our willingness to negotiate with them draft treaty articles which would be mutually acceptable on straits transit.

Straits to be Covered

The current U.S. proposal applies a free transit regime to all straits used for international navigation between one part of the high seas and another part of the high seas or

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the territorial seas of a foreign state. To attain greater flexibility, an exclusion formula (which would exclude certain straits based on specific criteria) might prove advantageous. The formula would provide a regime of non-suspendable innocent passage in those straits which were excluded.

Recommendations

The U. S. should be authorized to support a regime of non-suspendable innocent passage through those straits six miles wide or narrower or which, although wider than six miles, do not connect two parts of the high seas. The U.S. should also be authorized to support an exclusion for straits formed by islands within 24 miles of the coast of the same state where, and only to the extent that, a nearby and equally suitable high seas route is available on the seaward side of the islands. (This exclusion would be drafted to ensure that the Soviet Arctic straits are not excluded.)

Nature of Regime

The U.S. has proposed that vessels and aircraft, in transit through and over international straits, enjoy the same freedom of navigation and overflight, for the purpose of transit, as they enjoy on the high seas. In all other respects, the straits would be territorial waters under the sovereignty of the coastal state.

Recommendations

The U.S. should continue to emphasize the critical elements of the U.S. straits proposal--unimpeded transit through and over international straits by surface vessels, submerged and surfaced submarines, and military aircraft without a requirement for notification to, or authorization from, the coastal state -- while playing down use of the term "free transit."

It is also recommended that the U.S. be authorized to privately assure states bordering the Malacca and Danish straits that we will not transit them submerged because it is clear that this cannot be done safely; support a system whereby the coastal state could design a surface traffic control system for international straits which should be

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implemented only after approval by the Intergovernmental Maritime Consultative Organization and whereby major user states would be obligated to agree with straits states on an equitable method of joint financing for such systems; support the same vessel pollution regime in straits as would apply in areas beyond the territorial sea; accept a duty for state aircraft to respond while in the strait to ground communications from the appropriate international air traffic controller on applicable international frequencies for the purpose of verifying course, speed, and altitude; support liability up to and including a rule that the flag state be subject to strict liability for personal injury or property damage to the coastal state or its inhabitants caused by an act of or accident involving a vessel or aircraft entitled to sovereign immunity while exercising the right of transit in the strait; and support, if necessary (i) the strict liability of the owner or operator of a commercial vessel or aircraft for personal injury or property damage to the coastal state or its inhabitants caused by an act of or accident involving the vessel or aircraft transiting the strait and (ii) flag state responsibility to require its flag vessels to have insurance or other financial security.

4. Archipelagos (Section D)

Archipelago claims have been advanced by, among others, Fiji, Indonesia, Mauritius, and the Philippines. Since the archipelago issue is interfering with progress in other areas of the negotiations, including in particular the straits issue, the U.S. should seek an early solution which meets the security interests of the U.S. and the political and security interests of the claimants.

Recommendations

The U.S. should intensify exploratory efforts to determine whether a solution is possible which would embody, among others, the following points: the archipelago concept would apply only to island states; archipelagic lines, not to exceed 90 (or 120 as a fallback) nautical miles, could be drawn from outermost land point to land point; all enclosed waters would be "archipelagic waters" which would differ from internal waters, territorial waters, or the economic zone; the maximum ratio of water to land would be 5:1; the archipelagic state would have exclusive jurisdiction over activities within the archipelagic waters other than

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navigation and overflight; transit through and over archipelagic waters would not be subject to notification; the navigation and overflight right would be the right to transit the archipelago in a route which reasonably conforms to the destination outside the archipelago and which would be accomplished without unreasonable delay; all vessels and aircraft may take such measures in transit as are normal for their safety and self-defense; the straits transit regime, if necessary, could be accepted for the straits portion of the transit; and vessels and aircraft entitled to sovereign immunity would be exempt from pollution standards and enforcement although the archipelago state could establish and enforce non-discriminatory discharge and dumping standards for commercial vessels. If necessary, we could accept transit through a passage area not less than 75% of the area between the nearest points of land or 100 miles, whichever is less.

5. Coastal Resources and an Economic Zone (Section E)

The major issues are coastal state jurisdiction beyond 200 miles over continental margin seabed resources and coastal and anadromous fisheries, special treatment for highly migratory species through regional or international organizations, limitations and standards governing the exercise of coastal state jurisdiction, and compulsory settlement of disputes. In the context of a satisfactory resolution of these major issues and an overall satisfactory settlement, the U.S. can support coastal state jurisdiction over all resources in a 200-mile economic zone.

Seabed Resources of the Continental Margin

There is a complex matrix of competing costs and benefits to the U.S. inherent in international recognition in the Convention of coastal state seabed resource jurisdiction beyond 200 miles. Based on these considerations and the negotiating situation, the following recommendations are made.

Recommendations

The U.S. Delegation should not oppose proponents of a 200-mile limit, proponents of a margin limit beyond 200 miles or proponents of an intermediate zone beyond 200 miles, but should seek to establish a tactical role of honest broker on the issue. The Delegation should take no position

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inconsistent with coastal state jurisdiction over Arctic seabed resources extending to the North Pole under a sector approach limited to resource jurisdiction. Precise figures for defining any continental margin limits beyond 200 miles should be developed.

Revenue Sharing

There is a disagreement about whether there should be revenue sharing in any area of coastal state seabed jurisdiction and, if so, where and what rate should apply.

Option 1 states that the U.S. should withdraw its support for revenue sharing. The arguments for the option are that revenue sharing involves large sums which will increase through time; that verification of coastal state compliance will be difficult; that it would be a disincentive for exploitation of hydrocarbons; and that it would raise prices. The arguments against the option are that withdrawal of our support for revenue sharing would seriously impair U.S. credibility for the U.S. has consistently and strongly supported this policy since it was announced by President Nixon on May 23, 1970; that developing countries would doubt the seriousness of our proposals in terms of accommodating their interests; that revenue sharing is virtually the only benefit that might be offered to geographically-disadvantaged states which have little to gain from coastal state jurisdiction over seabed minerals and which constitute a blocking third at the Conference; and that revenue sharing sums are unlikely to be excessive since they would apply uniformly to all coastal states.

Option 2 provides for revenue sharing, not to exceed 1% of the value of the hydrocarbons extracted, from seabed minerals production seaward of a 12-mile territorial sea. The arguments for this option are that it would include major areas like the Persian Gulf and North Sea, thus increasing total revenues and reducing the rate of sharing; gain votes of geographically disadvantaged states for our non-resource objectives; increase the chances for success in obtaining other international standards from 12 miles out; and provide a larger revenue sharing area which, in turn, allows for a lower sharing rate. The arguments against this option are that revenue sharing is designed as a device for accommodating legal differences on coastal state jurisdiction beyond 200 meters; that opposition to revenue sharing at 12 miles is

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likely to be great since coastal states have vested rights within 200 meters; and that a significant portion of the recoverable hydrocarbon potential on the U.S. continental margin lies between 12 miles and the 200 meter isobath.

Option 3 states that the U.S. should continue to support revenue sharing, at a rate not to exceed 5% of the value of the hydrocarbons extracted, seaward of the territorial sea or the 200-meter depth curve, whichever is further seaward. The arguments in favor of option 3 are that all current U.S. production is from areas landward of the 200-meter depth curve; revenue sharing is designed in part to accommodate differences on coastal state jurisdiction beyond 200 meters; and more than half of the recoverable hydrocarbon potential on the U.S. margin is landward of 200 meters. The arguments against option 3 are that the U.S. should not take the blame for excluding wealthy, shallow areas from revenue sharing; major oil exploitation is in the Persian Gulf and North Sea at depths less than 200 meters; and the U.S., since it is likely to use deep water technology first, might pay a higher proportion of the total revenues initially under this option.

Options 2 and 3 are not mutually exclusive since the Delegation could use the flexibility of authority under both to seek the greatest negotiating advantage for the U.S. Moreover, an additional option, consistent with options 2 and 3, would allow the U.S. to support a greater rate of revenue sharing for seabed areas under coastal state control beyond 200 miles than those landward of 200 miles. Divergent views on coastal state control of seabed resources beyond 200 miles might best be reconciled by accepting this approach, and this approach could relieve pressure for a high rate landward of 200 miles. On the other hand, this could prove expensive to us, could be a disincentive to exploitation, and could raise prices.

Delimitation and Island Problems

The issues of boundaries and whether small, isolated islands are entitled to full economic jurisdiction are controversial and we will generally avoid being involved in discussions concerning them. Although both the U.S. and its allies (France and the U.K.) have interests in these

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issues, the U.S. should remain silent rather than risk identifying the islands issue with big power ambitions.

Fisheries

As stated in earlier instructions, the U.S. objectives are to seek international acceptance of a fisheries settlement that would (i) give coastal states effective regulatory and economic control over coastal and anadromous species throughout their migratory range on the high seas, subject to international standards, and (ii) provide for international regulation for highly migratory species. To develop support for the U.S. position, the U.S. delegation has been authorized to explore and proposes to seek the possibility of a compromise which accommodates our fisheries objectives within the framework of a 200-mile economic zone. At the same time, however, the U.S. should also support coastal state control and preferential rights over coastal and, especially, anadromous species that migrate beyond the zone.

Recommendation

Assuming an obligation to permit foreign fishing to the extent stocks are not utilized up to the allowable catch by the coastal state fishermen, the U.S. Delegation should be authorized to accept a coastal state right to license foreign fishing for stocks under its jurisdiction, subject only to a general limitation that the conditions of the license be reasonable and non-discriminatory as among foreign fishermen.

In addition, the U.S. should at the appropriate time and if consistent with the overall fisheries settlement indicate that it is prepared to regard joint ventures in coastal state fisheries as entitled to preferential rights, regardless of the flag of the vessel. Furthermore, we should maintain our broad flexibility concerning traditional fishing while continuing to press our objective of including some provisions for traditional fishing in the Treaty.

Highly Migratory Species

Because of their migration patterns, highly migratory species (tuna and whales and other highly migratory fish

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and marine mammals) cannot be managed in individual 200-mile zones to ensure conservation or equitable allocation of stocks. Accordingly, a regional or international system of management is necessary. However, to achieve our objectives, coastal state political and economic interests may well have to be accommodated within the international or regional framework.

Recommendation

To achieve a satisfactory resolution of the problem of regulating highly migratory species within the framework of international or regional organizations, the U.S. should have the negotiating flexibility to pursue possible accommodations including those concerning fees, preferential rights, licensing, and coastal state enforcement. Any accommodation, however, must not only support our objectives concerning highly migratory species and provide adequate protection for our tuna interests but also be accompanied by a more accommodating approach by the coastal states with regard to our other interests including straits, general navigation, and deep seabed issues.

6. Pollution (Section F)

The current U.S. position includes a general obligation not to pollute the marine environment, requires adherence to international standards for all marine-based sources of marine pollution, provides for the establishment of international standards for such sources of marine pollution, and permits the coastal state to apply higher standards to seabed resource activities, drilling, and fixed installations in the exercise of its rights in the Coastal Seabed Economic Area. With respect to vessels, a state may not impose higher standards except on vessels entering its ports or its flag vessels, although it may enforce international standards in its territorial sea, has limited enforcement powers beyond, and can prosecute vessels in its ports for violations of international standards irrespective of where they occur. Under the U.S. position, warships are exempt from the pollution articles.

The most sensitive pollution negotiating problem relates to vessel-source pollution. Many coastal states including Canada and Australia favor rather broad coastal state authority in a zone. Some maritime states have indicated

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a willingness to accept a coastal state enforcement right of international standards in a zone and standard-setting rights in exceptionally vulnerable areas. However, since the last preparatory session, the 1973 IMCO Conference has produced a good set of international standards and IMCO has been somewhat restructured to allow rapid, effective future action in setting new standards. Four options are presented which would change our existing position. Disapproval of all four options would mean that the U.S. would continue to support and work for adoption of its present position. One or more of the latter three options can be approved in conjunction with Option 1.

Option 1 provides that coastal states may enforce international discharge and dumping standards in a zone extending to a maximum breadth of 50 nautical miles from the coast, provided that vessels and aircraft subject to sovereign immunity would be exempt and that there would be prompt release of vessels under bond, liability for unreasonable enforcement actions, and compulsory dispute settlement.

The arguments for option 1 are that the U.S. must be prepared to move if it is to influence the majority and the outcome of the pollution negotiation. This move will also enable the U.S. to argue for a distinction between discharge and construction controls, thus avoiding coastal state rights regarding construction of vessels, a right which could seriously hamper navigation. The arguments against option 1 are that existing U.S. proposals have not received adequate consideration by other delegations. It could also result in interference with navigation and would be of limited effectiveness in protecting the environment. Jose Vallarta, of Mexico, Chairman of the Pollution Working Group, has told us that his concept of a final settlement would include an economic zone satisfactory to other countries with no coastal state pollution control zone.

Option 2 would authorize the U.S. to support a maximum zone of 100 nautical miles if option 1 is approved and agreement cannot be reached on a 50-mile limit. The arguments for option 2 are that Canada, a leader in the pollution negotiation, has used the 100 mile figure in her domestic legislation. In addition if agreement is not possible on a 50-mile limit the U.S. would have to support a 100-mile position to prevent the negotiation from going to a 200-mile

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zone. The arguments against option 2 are that the area of potential interference by coastal states with navigation would be increased and environmental protection would not be significantly increased by an extension from 50 to 100 miles.

Option 3 authorizes the U.S. to support a coastal state right, in addition to the right in option 1, to establish and enforce discharge and dumping standards in the zone higher than the international standards, provided that the coastal state could neither discriminate between vessels of differing nationalities nor set standards which would have the practical effect of preventing navigation. The arguments for option 3 are that it would deal with the most visible and politically sensitive problem; would strongly enhance our ability to prevent coastal state construction standard-setting and would provide additional environmental protection particularly from oil tankers if adopted for an area broader than 50 miles. The arguments against option 3 are that the environmental benefits would not be great; coastal state rights to set higher standards could undercut efforts to achieve higher international standards; and the already high international standards should be tried before they are increased.

Option 4 would allow the U.S. to support exclusive international vessel construction standards for pollution prevention for foreign ships entering ports but allow port states to apply internationally agreed standards prior to their effective date or entry into force, subject to consultations with appropriate members of Congress and their staff. The arguments for the option are that it would remove the inconsistency between U.S. opposition to coastal state residual authority to set construction standards and U.S. support for port state authority to set such construction standards. It may also help obtain maritime state support on other aspects of the vessel pollution issue. The arguments against the option are that certain Congressmen would find it difficult to accept relinquishment of this right embodied in U.S. legislation since most tankers entering U.S. ports are not covered by the new IMCO construction standards, and since, under the IMCO Convention, a few major flag states can block amendments. Moreover, port states, unlike coastal states, are likely to act reasonably so as not to disrupt their own trade.

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Recommendation

Although the options reflect the areas of greatest concern, it is recommended, in any case, that the U.S. be authorized to explore privately the concept of a "Ship-rider" approach to enforcement of tanker discharge standards, pursuant to which a ship-rider would be placed aboard each tanker and be required to report any illegal discharges to the next port-of-call or the flag state which would have to take enforcement action against the vessel. In addition, the U.S. should be authorized to explore privately coastal state standard setting, subject to IMCO approval, of construction standards for well-defined areas with special ecological and navigational problems.

7. Scientific Research (Section G)

As a result of economic, military, and scientific interest, the U.S. has a major interest in assuring the maximum freedom of marine scientific research. The U.S. has proposed, as an alternative to coastal state consent, a series of obligations upon the researcher and his flag state to respect coastal state resource interests in waters and seabed areas beyond the territorial sea where the coastal state exercises jurisdiction. These obligations include advance notification, participation, data sharing, assistance in interpreting data, and compliance with applicable international environmental standards.

To date, the response to the U.S. proposal from both developed and developing countries has been disappointing. It is agreed, however, that there should not be an early change in the U.S. position, but that we should make every effort to persuade others of its merits. In dealing with developing countries the U.S. should also explore the possibility of fostering regional training centers for scientists, providing selected developing countries with research vessels, offering a significant contribution (\$50 million over 10 years) for regional centers and research vessels, and expanding the coastal state's right of participation by providing for the coastal state's scientists to participate in the research -- all appropriately linked to support for protection of marine scientific research. In discussion with developed countries, attention should be focussed on the similarities of our research interests.

While it is agreed that there should not be an early change in the U.S. position, there is disagreement as to whether the Delegation should be authorized to accept a form of coastal state consent. An option is presented on this issue.

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Option

If it is determined that there is no basis for agreement without a consent requirement and that an accommodation would better serve U.S. research interests than being outvoted, the U.S. is authorized to negotiate a consent requirement in areas of coastal state resource jurisdiction, provided that the coastal state is required to grant consent if specified criteria are met and provided, also, that consent must be presumed in the absence of a denial of consent within a fixed period of time.

The arguments for the option are that a consent requirement such as stated in the option would be a significant improvement over the existing Continental Shelf Convention in that consent could not be denied if specific criteria are met, and consent is presumed in the absence of a denial. It may prove necessary to move soon in view of the opposition to the present U.S. approach if we are to have any influence in avoiding a worse regime. Moreover, military research can only be protected by careful drafting which may require participation in drafting of the consent regime. The arguments against are that it broadens the consent regime of the Shelf Convention to the water column as well as the shelf, and in areas where the continental shelf is less than 200 miles wide expands the consent requirement beyond the shelf. A consent regime is inconsistent with our objective of limiting coastal state jurisdiction, and even though carefully worded, provides the coastal state with a practical right of denial in individual cases. A change in position could draw attention to our interest in military research and cause difficulties in preserving it. Coastal states should have little more reason to support this option than our present position and thus a change in position could ultimately facilitate movement to a more stringent consent regime.

8. Compulsory Settlement of Disputes (Section I)

Although no change is required in the instructions concerning compulsory dispute settlement, a clarification is needed. Since the U.S. draft proposal omitted reference to dispute settlement in the territorial sea and straits and since the underlying problem in these areas relates to warships and state aircraft, an adjustment should be made.

Recommendation

It is recommended that compulsory dispute settlement apply to all parts of the Convention, but it would not apply to any dispute regarding a vessel or an aircraft entitled to sovereign immunity under international law without the express consent of the flag state.

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TAB

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East Asian Contested Islands

Secret

BGI RP 74-12
February 1974

NATIONAL SECURITY INFORMATION
Unauthorized Disclosure Subject to Criminal Sanctions

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Approved For Release 2001/09/05 : CIA-RDP80B01495R000800130001-9

Central Intelligence Agency
Directorate of Intelligence
February 1974

EAST ASIAN CONTESTED ISLANDS

SUMMARY

Recent clashes between the Peoples Republic of China (PRC) and South Vietnam over the Paracel Islands and the rush to occupy some of the Spratly Islands by South Vietnamese and Philippine troops relate to old disputes but with a new twist -- oil. In the past 5 years, preliminary geophysical exploration and a few drillings along the margins of the East Asian Continental Shelf have heightened expectations that sizable oil deposits lie beneath the East and South China Seas. The Paracels, Spratlys, and other islands off the East Asia mainland, including those in the Gulf of Thailand and the East China Sea, are now being contested, not for their intrinsic worth but for their value in determining seabed jurisdiction.

- ... Almost all of the contested islands are without an indigenous population, and their economic value -- aside from extraction of guano phosphates on some -- is virtually nil.
- ... Present international law provides inadequate guidelines for determining the seaward extension of land boundaries, either on the continental shelf or into the deeper waters of semi-enclosed seas. This shortcoming magnifies the confusion in the jurisdictional picture of the South China and East China Seas. The Third International Conference on the Law of the Sea (LOS), which convenes in the summer of 1974, may resolve some of these problems.

Comments and questions may be directed to [REDACTED] of the Office of Basic and Geographic Intelligence, Code 143, Extension 3057.

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... If the upcoming LOS Conference adopts measures to allocate seabed resources in semi-enclosed seas, ownership of islands could be crucial in determining which coastal state gets the largest share of the seabed and its resources.

Ownership of the islands could become a major source of friction among the claimants even if -- as seems likely -- there are no further military clashes on the Paracels pattern. There is an obvious possibility for upset in Sino-Japanese relations if Tokyo begins oil exploration activity in the Senkakus sector without prior agreement with the Chinese. There is also a potential for disruption of the Sino-US detente, particularly if Peking attempts to move against the Nationalist garrison on Pratas. Though China's problems with other claimants are susceptible of negotiation in time, the current surge of interest in oil exploration off the East Asian coast may lead to precipitate and risky actions in some instances.

1. Contested islands fringe the East Asian mainland, extending north to south from the west coast of Korea to the South China Sea and Gulf of Thailand.* All of the islands in dispute are small, most are uninhabited, and only a few have any economic significance (Map A). Interest in them has risen and publicity over rival claims has grown since 1970, following release of data indicating the probability of petroleum resources in the East and South China Seas. Although national prestige, military, and strategic factors are significant elements in at least some of the disputes, the seabed resources issue undoubtedly is the motive that has fanned controversy and hastened decisions to seize control of some of these islands.

Petroleum Prospects

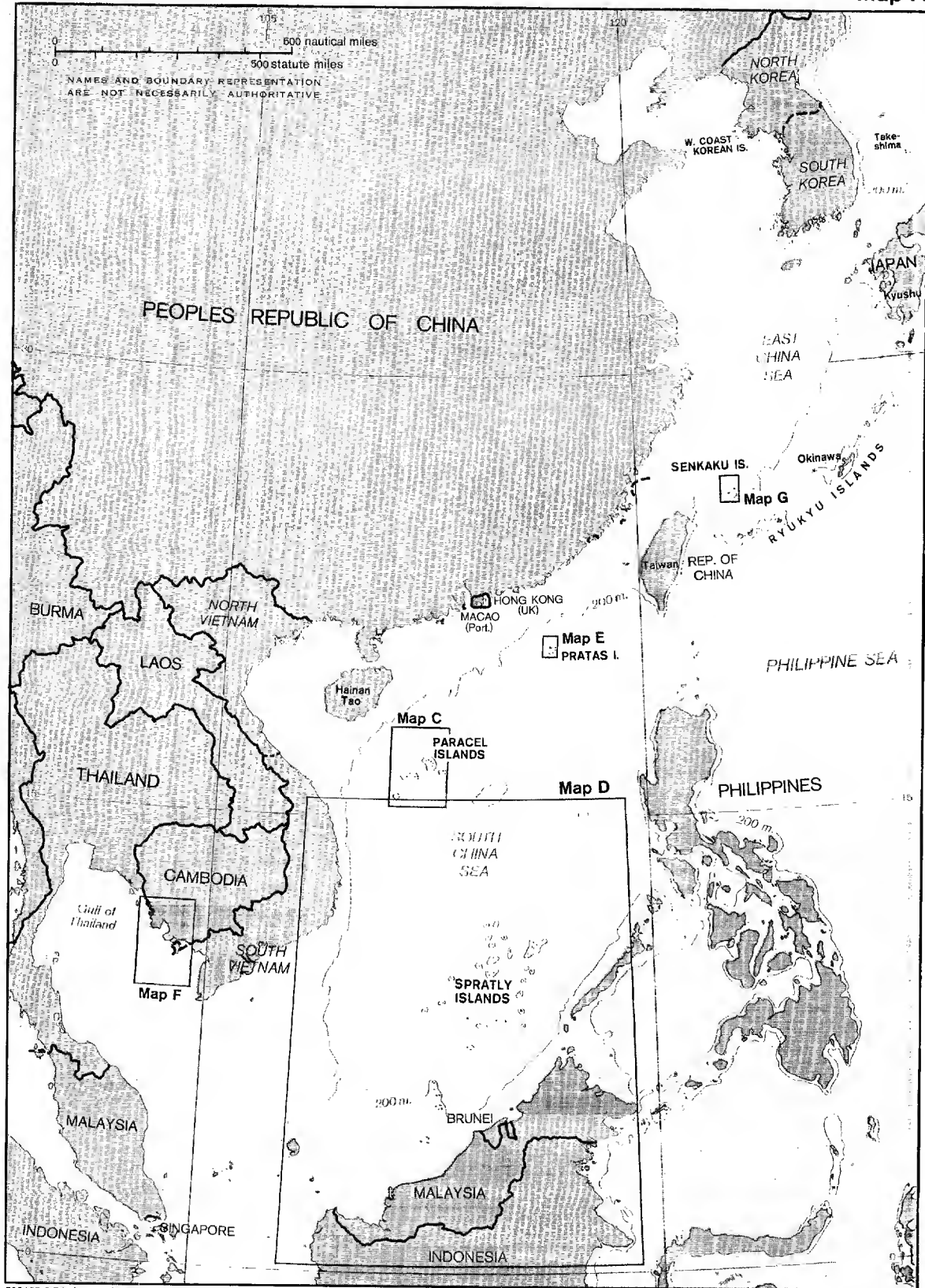
2. There is oil beneath the seabed of the South China and East China Seas. Oil and natural gas are today extracted off the shores of Sarawak and Brunei, in the southern part of the South China Sea.** Exploratory drilling in the past year indicates the probability of deposits off the west coast of Sabah in East Malaysia, the east coast of West Malaysia, in the middle of the Gulf of Thailand (an arm of the South China Sea), and on the continental shelf between the Peoples Republic of China (PRC), Taiwan, and Japan in the East China Sea.

** Islands contested but not treated here include the Offshore Islands and other islands between Taiwan and the mainland controlled by the Republic of China. A recent background paper examines their present status (Appendix I). The west coast Korean Islands are treated in a paper that examines the Law of the Sea and related issues in the situation (Appendix I). North Korea has recently challenged access to these five island groups, occupied by South Korean forces. Take Shima, or the Liancourt Rocks, midway between Japan and South Korea, also is in dispute. South Korea maintains a garrison on them.*

*** The combined Sarawak and Brunei production is about 300,000 barrels daily and is expected to double in the next 2 years.*

East Asian Contested Islands

Map A



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3. Assessment of the region's potential is premature. Except for offshore Sarawak and Brunei, exploration has been underway for only 2 years or so; years of seismic surveys and drilling are needed to adequately estimate reserves. South Vietnamese officials hope, for example, that the probability of oil in the seabed southeast of the Mekong delta can be determined by mid-1974. If positive evidence is found, exploratory drilling could begin by late 1974; but definitive answers would not be obtained for several more years.

4. Oil prospects appear most promising in the southwestern part of the South China Sea and in the Gulf of Thailand, both entirely on the continental shelf. Seismic surveys have determined that sediments there are thick and particularly favorable for petroleum formation and collection. Conditions are similar to those off the eastern shore of Sumatra, in Indonesia, and oil company geologists and government officials are hopeful that the newly explored areas will prove to be as productive.*

5. In the northeastern two-thirds of the South China Sea, which includes the Spratlys and Paracels, evidence of oil is far more scanty. Because the continental shelf in this sector is nowhere more than 150 miles wide and much of the sea is deeper than 3,000 meters, the prospects for discovering commercially exploitable oil deposits are greatly reduced. The Nationalist Chinese are drilling 60 miles west of southern Taiwan. Elsewhere, the PRC has embarked on exploration on its own continental shelf and is engaged in exploratory drilling on one of the Paracel islands; in addition, the North Vietnamese are doing some seismic exploration in the Gulf of Tonkin. Although most depths beyond the continental shelf in this part of the South China Sea exceed present drilling capabilities, the seabed surrounding island groups such as the Paracels and the Spratlys can assuredly be exploited by rapidly improving drilling technology within the next few years.

* *Indonesia produces about 2 percent of the world's crude oil; although only 14 percent of her total production now comes from offshore fields, this figure is rapidly increasing.*

6. Late 1973 Japanese press reports claimed that oil reserves in the Gulf of Tonkin had been proven by North Vietnam with Soviet technology; the most promising area was reported to be near Haiphong. Even if the reports are untrue, geologic conditions in the Gulf are favorable for the accumulation of thick oil-bearing sediments. North Vietnam reportedly agreed late in 1973 to permit a Japanese company to explore there. The continental shelf boundary between North Vietnam and the PRC has not yet been determined and the numerous small islands off both coasts could make its delimitation difficult.

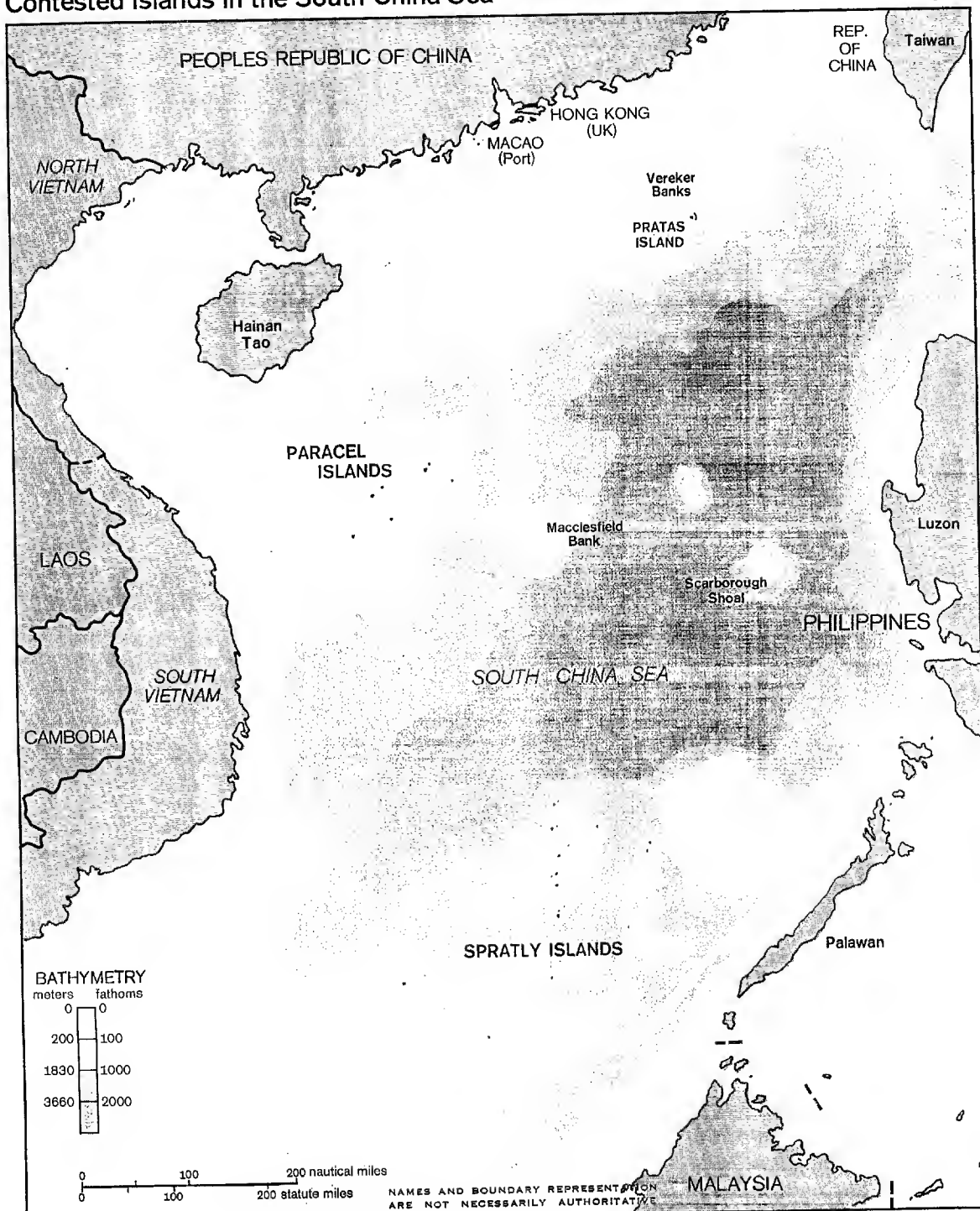
7. In the relatively shallow East China Sea, geologic conditions are also favorable for the formation and collection of petroleum. Exploration is still in its early stages, however; and despite an early 1974 report of a promising oil strike west of the Senkakus, oil company officials remain guarded in their outlook.

South China Sea Islands

8. Current tensions in the South China Sea over possession of the Paracel and Spratly Islands involves well over 100 small islands, islets, reefs, and rocks of seeming inconsequence (Map B). Although most of the islands have been used for centuries by fishermen from the surrounding states, and since the 19th century some have been exploited for their guano phosphate deposits, none of the islands is known to have supported a permanent settlement. Prior to and during World War II Japan used a few of the islands, principally for meteorological and communications facilities and phosphate extraction. The signing of the 1951 Peace Treaty with Japan appears to have created a legal vacuum since the Japanese claims were nullified by terms of the Treaty. Subsequently, both Peking and Taipei reasserted claims encompassing almost all of the South China Sea, and South Vietnam claimed the Paracels and Spratlys. More recently, the Philippines have recorded a claim to some of the Spratly Islands. Although political and military factors are significant in the dispute over ownership, the increased interest and growing tensions of the past few years undoubtedly reflect the possibility that sizable petroleum resources underlie the South China Sea.

Contested Islands in the South China Sea

Map B



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Paracel Islands

9. The fighting that erupted in January 1974 in the Paracel Islands between South Vietnam and the PRC highlighted their long-smoldering dispute over possession of these islands (Map C). Since at least the mid-1950's, each country has been in continuous occupation of one of the two groups of islands that comprise the Paracels -- the Chinese in the Amphitrite Group, and the Vietnamese in the Crescent Group. The brief clash, apparently sparked by Chinese occupation of the islands in the Crescent Group, which the South Vietnamese attempted to thwart, left the Chinese in control of all of the islands.

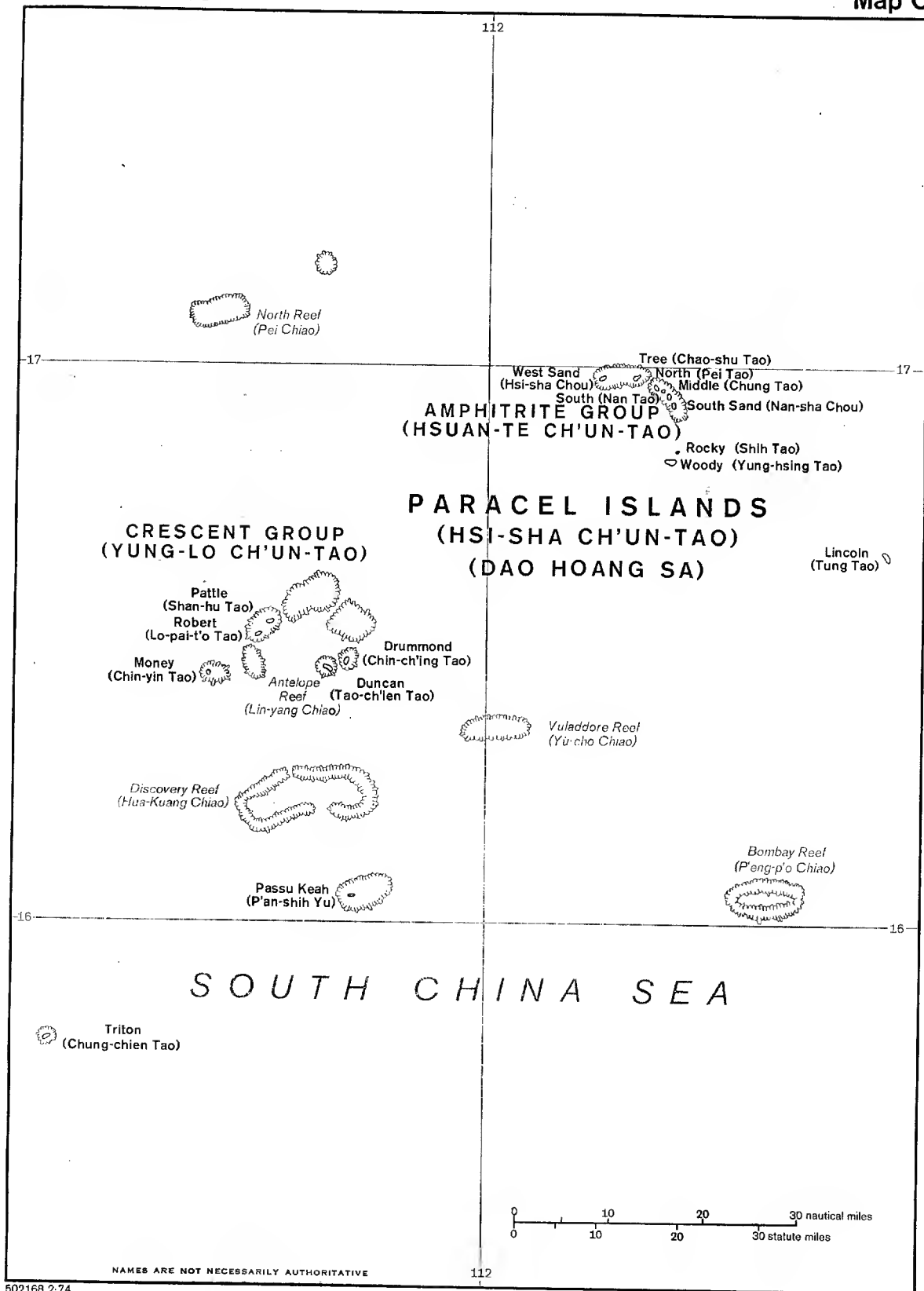
10. The potential seabed resources of the Paracels undoubtedly are an important element in the events of early 1974. The Chinese may have important information about the underground resources of the Paracels since they are making exploratory drillings on Woody Island. On 11 January 1974 Peking reiterated its claim to the Paracels, the other island groups in the South China Sea, and the seas around them. This may have been a reaction to renewed claims by South Vietnam and also to concern over South Vietnamese grants for exploratory concessions in the seas near Vietnam, some of which slightly overlap Chinese claims. Although the question of *de jure* sovereignty remains unsettled, the PRC occupation makes this an academic question.*

11. The Paracels -- called by the Chinese, Hsi-sha Ch'un-tao, or West Sand Islands and by the Vietnamese Dao Hoang Sa -- are scattered over a 60 by 100 mile area on a submerged platform surrounded by deep water. The two groups -- Amphitrite and Crescent -- are about 40 miles apart and together comprise some 16 small islands, plus numerous islets, rocks, reefs, and banks (Table 1). The islands and the shallow waters immediately surrounding them could be used in drilling operations should petroleum prospects appear likely.

* *A full discussion of the various claimants and the historical evidence of sovereignty is contained in CIA/BGI GM 72-4, The Paracel Islands Dispute, April 1972.S.*

Paracel Islands

Map C



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PARACEL ISLANDS (HSI-SHA CH'UN-TAO): TOPOLOGY, LOCATIONS,
AND STATUS OF SELECTED ISLETSAMPHITRITE GROUP (HSUAN-TE CH'UN-TAO)

<u>English</u>	<u>Chinese</u>	<u>Geographic Coordinates</u>	<u>Last Known Status</u>
Woody	Yung-hsing Tao	16°50'30"N 112°19'36"E	Headquarters of PRC Occupation large military and civilian force.
Rocky	Shih Tao	16°50'45"N 112°20'30"E	Small PRC force.
Lincoln	Tung Tao	16°40'N 112°43'45"E	Small PRC military and civilian force.
West Sand	Hsi-sha Tao	16°59'40"N 112°12'05"E	No permanent occupation.
Tree	Chao-shu Tao	16°59'42"N 112°15'50"E	No permanent occupation.
North	Pei Tao	16°57'45"N 112°18'25"E	No permanent occupation.
Middle	Chung Tao	16°57'15"N 112°19'E	No permanent occupation.
South	Nan Tao	16°56'40"N 112°19'45"E	No permanent occupation.
South Sand	Nan-sha Tao	16°55'40"N 112°20'30"E	No permanent occupation.

CRESCENT GROUP (YUNG-LO CH'UN-TAO)

Pattle	Shan-hu Tao	16°32'20"N 111°35'40"E	Probably occupied by PRC military force.
Robert	Lo-pai-t'o Tao	16°30'36"N 111°34'23"E	Possibly occupied by small PRC force.
Duncan	Tao-ch'ien Tao	16°27'N 111°42'45"E	Probably occupied by small PRC military force.
Drummond	Chin-ch'ing Tao	16°27'45"N 111°44'35"E	No permanent occupation.
Money	Chin-yin Tao	16°26'30"N 111°30'30"E	No permanent occupation.
Triton	Chung-chien Tao	15°47'15"N 111°42'E	No permanent occupation.
Passu Keah	P'an-shih Yu	16°03'N 111°45'30"E	No permanent occupation.

12. All of the islands are low, relatively flat, and composed principally of coral limestone overlain with sand. Most of the larger islands are fringed by a narrow sand beach backed by low-growing shrubs or trees. Reef shelves commonly surround the islands; some uncover or are barely covered at low tide. Anchorages for small ships are available outside the reefs on the lee side of a few islands. In addition to their use as fishing bases, most of these islands are rich in deposits of guano phosphate, an excellent fertilizer that requires little treatment before use. Deposits on Woody and Pattle Islands have been worked sporadically over the last 50 years; the Woody Island deposits are probably depleted.

13. The PRC began permanent occupation of Woody Island in late 1955 to extract fertilizer and work the local fisheries. By 1958 a fleet of 40 oceangoing vessels manned by 400 crewmen began to operate from the island, both for fishing and for surveillance of shipping in the South China sea lanes. Quantities of fertilizer and seafood have been shipped to the mainland. The occupying force has grown gradually despite largely unsuccessful efforts to raise food and a scarcity of fresh water.

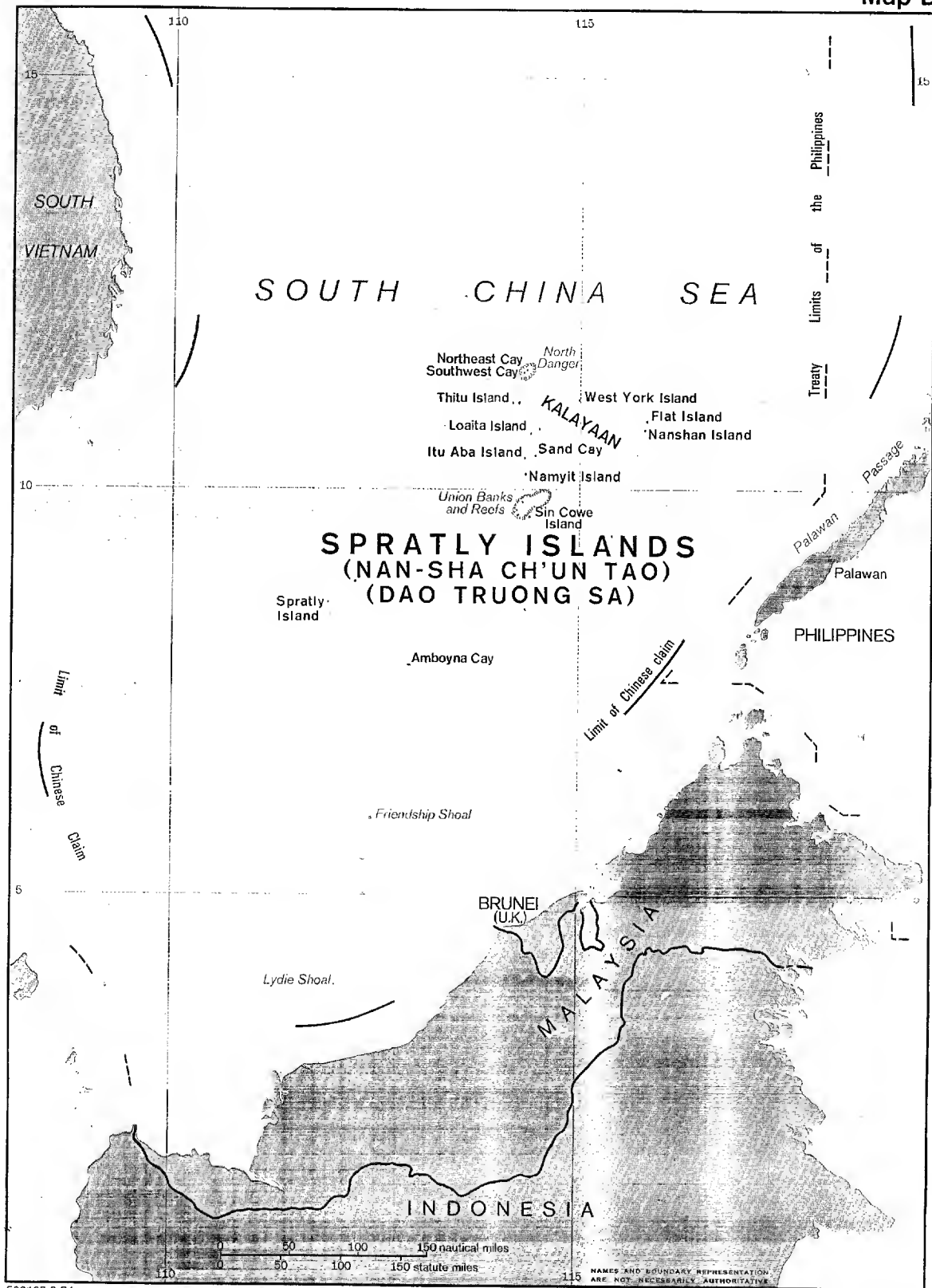
14. The only significant military installations are on Woody Island, and growing evidence of military activity has been reported in recent years. A harbor blasted out of the coral reef on the southwest side of the island to accommodate small ships could possibly serve as a small advance naval base or fueling station. A military command post has been established, and some defensive positions, including AAA sites, have been constructed. The Chinese operate weather and communications stations and early warning radar equipment.

Spratly Islands

15. The Spratlys are a group of coral islands, cays, and reefs physically similar to the Paracels and also claimed by both Chinas and South Vietnam as well as by the Philippines. South Vietnam dispatched a small naval task force to occupy five additional islands (one island was garrisoned in the early summer of 1973) in late January 1974 -- partly in reaction to their ejection from the Paracels by the PRC between 18 and 20 January. Taiwan occupies the largest island in the archipelago, Itu Aba (T'ai-p'ing Tao), and the Philippines also claim occupation

Spratly Islands

Map D



SPRATLY ISLANDS: TOPONOMY, LOCATIONS,
AND STATUS OF SELECTED ISLETS

<u>English</u>	<u>Chinese</u>	<u>Geographic Coordinates</u>	<u>Last Known Status</u>
Spratly Island or Storm Island	Nan-wei Tao	08°39'N 111°55'E	ROC reported un-occupied 9-73; RVN claimed setting sail to occupy 1-74.
North Danger	Shuang-tzu Chiao	11°25'N 114°21'E	
Northeast Cay (Parola)*	Pei-tzu Tao	11°27'N 114°22'E	ROP in occupation 2-74.
Southwest Cay (Pugad)	Nan-tzu Tao	11°26'N 114°20'E	ROP occupied 10-71; RVN occupied 2-74.
West York Island (Likas)	Hsi-yueh Tao	11°06'N 115°00'E	ROP occupied 8-73; ROP claimed occupation 2-74.
Thitu Island (Pagasa)	Chung-yeh Tao	11°03'N 114°17'E	ROP occupied 9-73; ROP claimed occupation 2-74.
Flat Island (Patag)	Fei-hsin Tao	10°50'N 115°49'E	ROP denied occupation 2-74.
Nanshan Island (Lawak)	Ma-huan Tao	10°44'N 115°48'E	ROP occupied 8-73; ROP claimed occupation 2-74.
Loaita Island (Kota)	Nan-yao Tao	10°40'N 114°25'E	ROP occupied 9-73; ROP claimed occupation 2-74.
Itu Aba Island (Ligaw)	T'ai-p'ing Tao	10°23'N 114°22'E	ROC occupied 2-74.
Sand Cay	not known	10°23'N 114°28'E	RVN claimed setting sail to occupy 1-74.
Namyit Island	Hung-hsiu Tao	10°11'N 114°22'E	RVN occupied 7-73; RVN claims occupation 2-74.
Union Banks and Reefs	Chin-lun T'an	09°50'N 114°26'E	ROC reported RVN visited 5-73; apparently unoccupied 6-73.
Sin Cowe Island	Ching-hung Tao	09°41'N 114°22'E	RVN claimed setting sail to occupy 1-74.
Amboyna Cay	An-po-sha Chou	07°52'N 112°55'E	RVN claimed setting sail to occupy 1-74.

*Names in () are Philippine designations.

of several additional islands (Table 2 and Map D). Most habitable islands are probably now occupied; the remaining Spratlys consist of reefs, rocks, sandbars, and other uninhabitable bits of land.

16. The Spratly Islands are ill-defined geographically and extend over a vast expanse of the South China Sea measuring approximately 500 miles by 200 miles in extent. The islands are variously termed the Spratly Group or Spratly Archipelago; many of them lie in the area designated "Dangerous Ground" on nautical charts because of the numerous shoals and other navigational hazards in this poorly charted area. The Philippine designation is Kalayaan, or "Freedomland," a term that applies to only a portion of the island group. Both Chinas include all of the islands and reefs under the name Nan-sha Ch'un-tao (South Sands Archipelago); the Vietnamese name is Dao Trouug Sa. Despite the large number of islands, islets, and banks, the total land area of the Spratlys at high tide probably totals no more than 1 square mile.

17. The petroleum potential beneath the waters surrounding the Spratly Islands is highly speculative. All of the Spratlys, with the exception of the southernmost reefs and shoals lying between Friendship Shoal and Lydie Shoal, are part of a discontinuous elevated submarine platform that is separated from the continental shelves of peripheral states (Map B). This submarine platform is bounded on the southeast by a deep submarine trench, underlying the Palawan Passage, that clearly separates the Spratlys from the continental shelf margin of the Philippine island of Palawan. Other deep sea areas separate the Spratlys from continental shelves to the north and west. The notable exception is the area lying southward from Friendship Shoal to Lydie Shoal that is part of the continental shelf extending north from East Malaysia.

18. Geophysical exploration of this part of the South China Sea has begun only recently, and seismic profiles and related data are limited. The platform is folded into several northeast - southwest ridges capped by some of the islands and banks of the Spratlys. These islets could serve as drilling platforms, though nothing positive is known of the organic content and reservoir characteristics of the strata that cap the floor and form the ridges.

19. The several claimants to the Spratlys rely on a variety of often conflicting evidence; physical occupation, however, is the means used to assert claims. The Republic of China sent a small military force to occupy the Spratlys in late 1945 following the defeat of the Japanese, who had maintained meteorological and radio stations on Itu Aba during World War II. This small Chinese garrison was apparently maintained on Itu Aba until the Nationalists' ouster from the mainland in 1949. The Republic of China later re-established occupation in 1956 when troops were again dispatched to garrison Itu Aba. The ROC military presence on this island appears to have been continuous since that time. Little else happened for a number of years -- until the possibility of petroleum deposits in the area was recognized. This undoubtedly was a major consideration in Manila's decision to occupy several islands in 1971 and in Saigon's dispatch of forces in mid-1973 and early 1974 to other islands in the Spratlys.* As of mid-February 1974, the South Vietnamese occupy islands mainly in the south and central Spratlys, Philippine forces control islands in the north and east, and Chinese Nationalist forces are on Itu Aba, between the two (Table 2 and Map D).

20. Strong reactions have been voiced by both Peking and Manila to the late January/early February landings by South Vietnam forces. The PRC, alone among the claimants in having no physical presence in the Spratlys, has strongly denounced the Vietnamese landings as a "new military provocation." The Philippine response has been formal protests to both Saigon and Taipei. A major Philippine point is that the area they term Kalayaan -- apparently the northeastern islands -- is distinct and separate from the remainder of the Spratlys. Kalayaan, according to Manila, has been acquired through occupation of five of the islands. The Philippine Government also has urged that the situation should be brought for a peaceful resolution to the attention of the United Nations or the signatories of the 1951 Japanese Peace Treaty. (This position was taken by Philippine officials as far back as the 1950's.)

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21. In addition to the current claimants, France and the United Kingdom have latent claims that have been neither reasserted nor withdrawn. North Vietnam has not advanced a claim to the Spratlys -- perhaps in deference to the PRC claim. Malaysia, however, has a legitimate, though yet unvoiced, claim to exploitation of the seabed within the southern Spratlys. The continental shelf north of East Malaysia includes the reefs and shoals from Friendship Shoal southward to Lydie Shoal -- features within the area claimed by both Chinas.

Pratas

22. Pratas Island -- Tung-sha Tao or East Sand Island -- is a circular coral barrier reef, roughly 13 miles in diameter, with an island on the west side (Map E). It is about 160 miles southeast of Hong Kong, 240 miles southwest of Taiwan, and 260 miles northwest of Luzon. The reef, a few miles northeast of the shipping lane between Hong Kong and Manila, is a shipping hazard because soundings give little warning of its proximity. Most of it uncovers at low tide. Its lagoon is shallow and studded with coral heads and a few rocks; anchorages are available only for small ships. The east-west oriented island is low, about 1-1/2 miles long by 1/2 mile wide, and roughly U-shaped around a shallow lagoon.

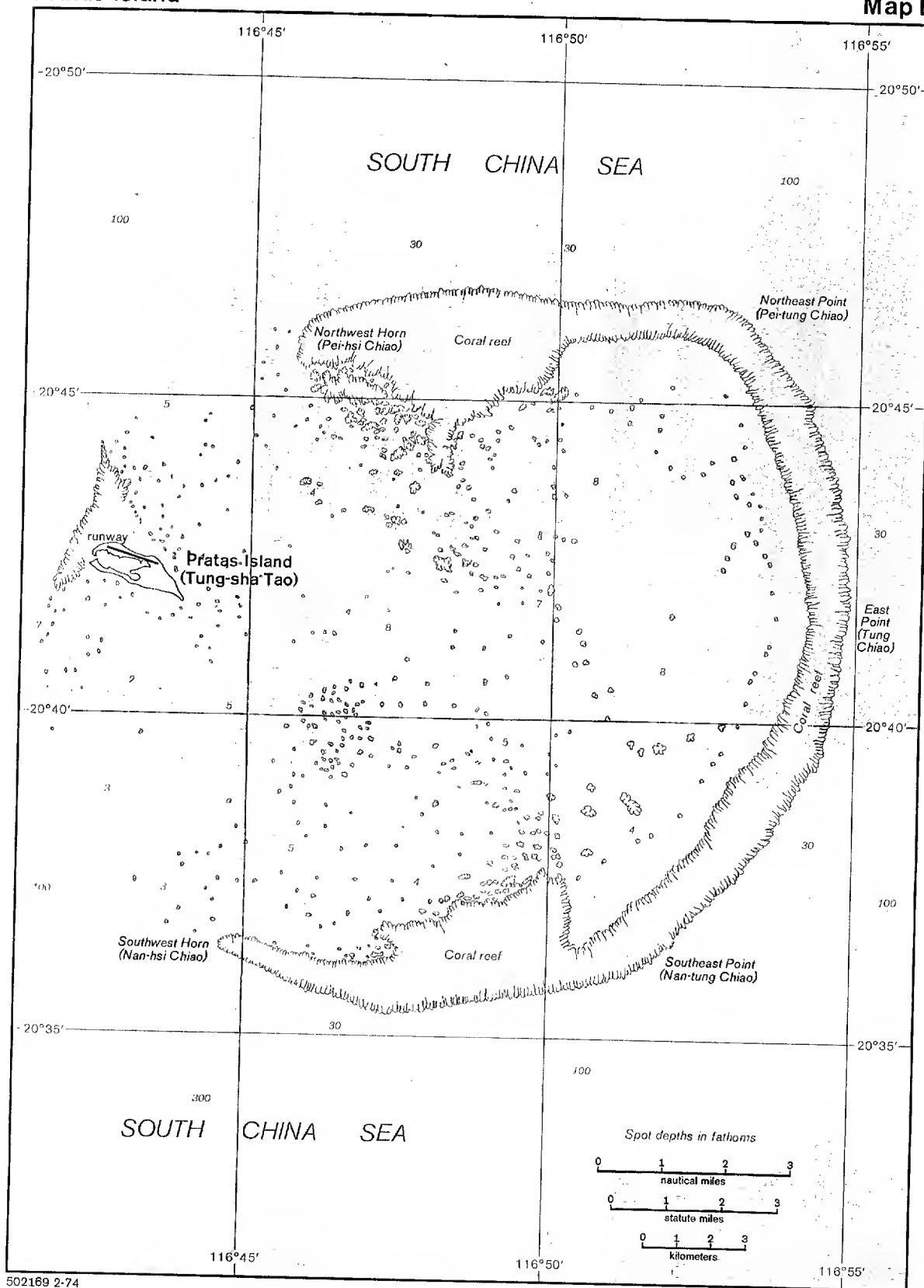
23. The Chinese include Pratas Island and Reef with the Vereker Banks -- North Vereker (Pei-wei-t'an) and South Vereker (Nan-wei-t'an) -- to comprise the Tung-sha Ch'un-tao (East Sands Archipelago). The Vereker Banks are submerged coral formations with minimum depths of 58 to 64 meters. North Vereker is about 7 by 5 miles in size; South Vereker is much smaller. The Vereker Banks are just off the continental shelf; Pratas is about 45 miles seaward.

24. Both Chinas contest ownership of Pratas, but neither has made a public issue of it in recent years. The PRC has never occupied the island. The Republic of China, however, maintains a military garrison and in 1964 constructed an airfield with a 5,000-foot concrete runway on the north arm of the island; it is sparingly used. The Chinese also operate a weather observatory and a radio station.

25. Pratas has had an obscure past, although the island has been occupied during most of this century. For years it served as a haven for fishermen who collected

Pratas Island

Map E



seaweed, shells, and coral. In 1906, the Japanese moved in to exploit the guano phosphate deposits. A dispute with China over ownership resulted, and the Japanese diplomatically withdrew after accepting Chinese payment for buildings constructed. Apparently, the Chinese proclaimed their sovereignty over Pratas but did not occupy it until 1926, when a naval weather observatory was established. The Japanese seized Pratas in 1937 and held it until early 1945. The Republic of China has occupied the island since 1946.

Macclesfield Bank and Scarborough Shoal

26. Macclesfield Bank, a submerged atoll in the central part of the South China Sea, is about 75 miles long, northeast-southwest, and 30 miles wide. It is located about 35 miles eastward of the main shipping lanes and 75 miles east of the Paracels (Map B). Most of the bank lies 64 to 82 meters below sea level; numerous poorly-charted shoals as little as 9 meters deep dot the surface of the bank. It has a discontinuous coral rim with an average width of 3 miles and minimum depths of 13 to 18 meters. Outside the coral rim, the bank slopes sharply into deep waters of more than 1,800 meters. Although Macclesfield Bank does not break the surface of the sea, it is usually visible from aloft. During heavy weather, the sea at the edges of the bank is high and confused.

27. Occupation of the Paracels could have significance for the legitimization of claims for Macclesfield Bank. An underwater feature, the bank cannot be treated from a jurisdictional standpoint as an island. The Chinese name for Macclesfield Bank, Chung-sha Ch'un-tao (Middle Sands Archipelago), is a misnomer. The bank is located equidistant from Hainan and Luzon, approximately 270 miles from each. It is clearly on the mainland side of the deepest part of the South China Sea, but more than 200 miles from the 200-meter isobath, the nominal edge of the continental shelf.

28. The value of Macclesfield Bank is unknown. Until recently, it was considered only a navigational hazard for large ships and a fishing ground. Although a survey published in 1971 by the Economic Commission for Asia and the Far East cited the "promising" possibility of petroleum deposits in Macclesfield Bank, there has been no rush to file claims. Both Chinese governments include the bank in their overall claim to islands and resources in the South China Sea.

29. Scarborough Shoal is a narrow, mostly submerged reef in the eastern part of the South China Sea, about 125 miles from Luzon (Map B). It is mainly a navigation hazard -- the pinnacle of an underwater peak in one of the deep areas of the South China Sea. The reef encloses a lagoon that is almost completely filled with subsurface coral heads at intervals of about 50 feet. Rocks on the reef belt are clearly visible from some distance, standing 5 to 8 feet above the breakers that crash against the shoal. South Rock (Huang-yen Tao), about 10 feet high, stands at the southeast corner of the shoal.

30. Scarborough Shoal has received little attention except from sea captains who have strayed from the main shipping lanes. Although small, some of Scarborough Shoal is above sea level and might have validity for the extension of island claims. The deep surrounding waters would make possible recovery of undersea resources extremely difficult. The Philippines have not claimed the shoal despite its proximity to Luzon. China includes Scarborough Shoal within the sweeping claims it makes for the South China Sea.

Disputed Islands in the Gulf of Thailand

31. The drawing of a maritime boundary between Vietnam and Cambodia (the Khmer Republic) among the islands in the eastern Gulf of Thailand has been contested since the French colonial era. The task has been further complicated in recent years by coastal state extensions of continental shelf claims through possession of offshore islands. The dispute between Cambodia and South Vietnam is divided into two distinct parts: the historical conflict over the islands near the mainland and the dispute over the smaller, more distant islands used in drawing median lines to delimit seabed exploration rights on the continental shelf. The latter issue has currently eclipsed the former.

32. The islands lie from one-quarter mile off the mainland in the case of Milieu and Cambodia, to 78 miles in the case of Hon Panjang. Island names are of Khmer, Vietnamese, or even Malay derivation; in size they vary from 500 square miles (Phu Quoc) to rocks awash. Current occupancy of the islands is difficult to determine except for Phu Quoc, which is Vietnamese, and Baie, opposite the Cambodian port of Ream (Table 3). South Vietnam reportedly exercises *de facto* control of Hon Panjang and Cambodia occupies Poulo

Contested Islands in the Gulf of Thailand

Map F



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ISLANDS IN THE GULF OF THAILAND: TOPONOMY, LOCATIONS, AND
STATUS OF SELECTED ISLETS

<u>English or French</u>	<u>Vietnamese</u>	<u>Khmer</u>	<u>Geographic Coordinates</u>	<u>Last Known Status</u>
Phu Quoc	Dao Phu Quoc	Koh Trai	10°18'N 104°00'E	South Vietnamese inhabited.
Milieu	Hon Phu Du	Koh Thmey	10°28'N 103°46'E	Probably Khmer.
Eau	Hon Nuoc	Koh Ses	10°25'N 103°48'E	Unknown.
Recif Depond (rocks awash)			09°55'N 103°10'E	Unknown.
Poulo Wai			09°56'N 102°56'E	Khmer.
Hon Panjang			09°18'N 103°28'E	South Vietnamese <u>de facto</u> control.
Peak (Pic)	Hon Antay	Koh Tonsay	10°26'N 104°20'E	Unknown.
North Pirate Island	Hon Tre Mam	Koh Po	10°24'N 104°20'E	Unknown.
	Hon Keo Ngua	Koh Angkrang	10°22'N 104°19'E	Unknown.
		Koh Seh	10°21'N 104°20'E	Unknown
Baie	Hon Vung	Koh Ta Kiev	10°29'N 103°36'E	Probably Khmer.
South Pirate Island	Hon Duoc		10°16'N 104°18'E	Unknown.
Hon Da Bon			09°22'N 103°22'E	Unknown.

Wai. Generally, inhabited islands north of the Brevie line are Khmer-occupied and those south of the line Vietnamese occupied (Map F).

33. The dispute over the near-shore islands was first acknowledged by the French in the late 1930's. The question then was which French possession should administer and police the islands -- Cambodia or Cochin China. The issue was partially solved in 1939 by the French Governor General of Indochina -- Jules Brevie. Brevie's solution was to draw a line perpendicular to the coast from the land boundary between Cochin China and Cambodia and extend it southwest at a 234° azimuth, except for a deviation around Phu Quoc, which was included under Cochin China's administration. All islands north of the line were administered by Cambodia, those south by Cochin China. Brevie avoided the sovereignty issue, however, by explicitly disclaiming any attempt to resolve it with this decree.

34. The Brevie line was accepted as the *de facto* maritime boundary between Cambodia and South Vietnam until 1958, when the Vietnamese fired on one of the Khmer-inhabited North Pirate Islands.* In 1960 Vietnam sent a note to Cambodia asserting Vietnamese sovereignty over the islands both north and south of the Brevie line. Milieu, Eau, and the North Pirate Islands were claimed to belong historically, legally, and geographically to Vietnam, based on Annamese colonization during the latter half of the 19th century. There is no historical evidence to support this view. The struggle for sovereignty continued during the early 1960's: the Khmers landed forces on the major North Pirate Islands, and Vietnam officially protested the "illegal" Cambodian occupancy of Milieu and Eau. By 1964 the countries had begun to extend their claims seaward; Cambodia claimed not only the South Pirate Islands but also Hon Panjang, an isolated island some 78 miles off the South Vietnamese coast.**

* The North Pirate Islands include Koh Angkrong, Koh Soh, and Koh Po, all north of the Brevie Line.

**The South Pirate islands are those of the Pirate Islands (Iles des Pirates) which lie south of the Brevie Line.

35. Essentially, the claims of both sides are all-encompassing. Cambodia claims not only all islands north of the Brevie Line but Phu Quoc, Hon Panjang, and the South Pirates as well. The Vietnamese claim extends as far north and west as Milieu, Eau, and Baie, all close to Cambodia's shore. Other than the minor shelling incident in 1958, there have been no military clashes over the islands.

36. Both countries have some good substantiating evidence for part of their claims. Cambodia, for instance, was recognized by France as possessing sovereignty over Phu Quoc, Milieu, and Eau in 1856. Other Cambodian claims are less easily confirmed. The Vietnamese, on the other hand, claim the islands as the heirs to French Cochin China.

37. The more recent dispute between the two countries involves smaller islands (Poulo Wai, Depond, and Hon Panjang) located much farther from the mainland than the islands separated by the Brevie Line. These islands have been used as base points from which to construct median lines to define their respective continental shelf rights. By simultaneously claiming these small islands, Cambodia and South Vietnam overlap some 24,000 square miles of each other's petroleum concession areas. In addition, both countries overlap Thai concession areas currently being prospected by several different companies. Although Cambodia and South Vietnam held exploratory talks in May 1973 in an attempt to solve offshore concession problems, no solution was reached.

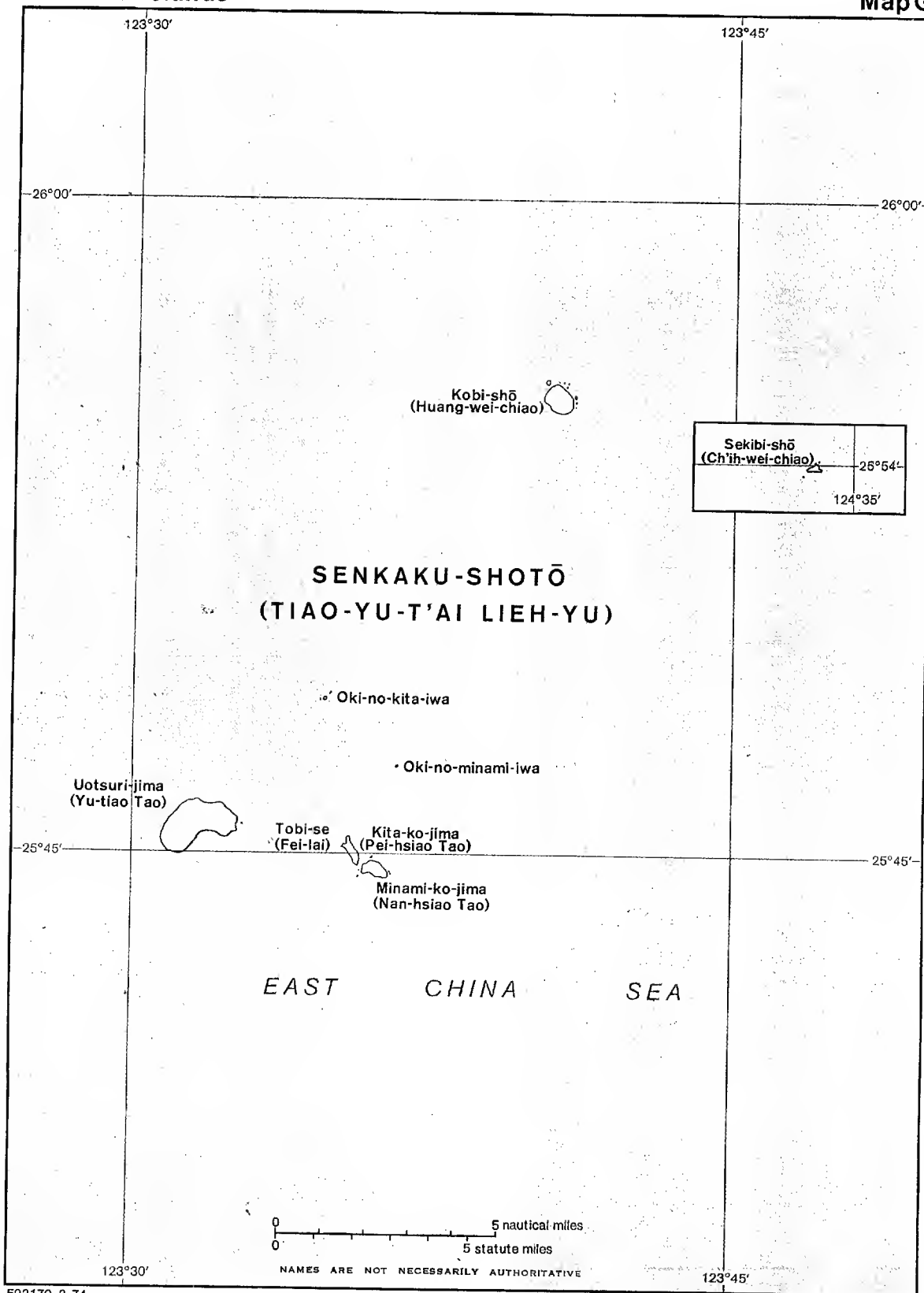
Senkakus

38. The Senkakus dispute focuses on a small group of uninhabited, largely barren East China Sea islets located on the eastern margin of the East Asian Continental Shelf in an area of potential oil resources (Map G). Prior to 1970 the Senkakus were virtually unknown and seldom shown on maps of the area. Publicity about possible petroleum deposits in the East China Sea, based on a 1968 UN survey, prompted a series of sovereignty pronouncements from Tokyo, Taipei, and Peking in 1970-71.

39. Japan's claim, originally the strongest of the three, was further enhanced when the United States returned the Ryukyus (and the Senkakus) to Japanese administration on 15 May 1972. But both the Republic of China (ROC) and the PRC -- citing practically identical historical,

Senkaku Islands

Map G



locational, and legal evidence -- maintain that reversion did not affect their claims because the Senkakus were never rightfully Japanese. In reality, the Senkaku sovereignty issue is only the superficial focal point of the dispute. The main issue is the division of the entire continental shelf upon which the Senkakus are located; all claimants want a share of its potential resources. Japan and Taiwan are in the early stages of petroleum exploration on the shelf, but both have kept these activities away from the Senkakus. The PRC's involvement in the area has remained rhetorical and low key.

40. The Senkakus are located about 100 miles northeast of Chi-lung, Taiwan's major northern port, some 200 miles from Okinawa and the China mainland, and about 500 miles from Kyushu. They comprise two islands -- Uotsuri-jima (less than 2 square miles in area) and Kobi-sho (approximately 1/2 square mile) -- and several small islets and rocks. Few offshore anchorages exist, landings are difficult and in many places dangerous, and beaches are practically non-existent. Small boat landings can be made via a slip on the western side of Uotsuri-jima -- but only during calm weather. Most of the Senkakus are practically devoid of vegetation, and fresh water is obtainable only on Uotsuri-jima.

41. Publicly, the GOJ treats the Senkakus sovereignty issue as settled. Tokyo's actions regarding the exploitation of the shelf in the Senkakus area, however, have been cautious and slow paced. No concessions have been approved south of approximately 29°00'N; applications for oil exploration licenses and other projects in the immediate vicinity of the Senkakus are being held in abeyance. Since reversion, Japan has had responsibility for defense of the Ryukyus, including the Senkakus, but the Self Defense Forces reportedly have stayed away from the disputed islands. Only the Civil Maritime Safety Agency makes occasional patrols. Taiwanese fishermen continue to enter the Senkakus from time to time and presumably come ashore occasionally.

42. In contrast to the cautious Japanese, the Republic of China has granted a petroleum concession that includes the Senkakus; but exploratory drilling, begun in August 1973, is some distance away. The concessionaire, Gulf Oil, in association with the ROC-owned Chinese Petroleum Corporation has a rig some 50 miles due north of Taiwan and approximately 100 miles west of the Senkakus. Adverse weather

conditions and technical difficulties have plagued the operation; moreover, Gulf has found the rig only marginally suitable for the area. Although Gulf has drilled one producing exploratory well, the so-called Fu-kui well, it will be difficult to meet exploration obligations under the terms of the concession.

43. The PRC has never established even a temporary presence on the Senkakus. Peking's 1970 claims were followed by a Foreign Ministry statement issued early in 1972, just 4 months prior to the planned reversion of the Ryukyus to Japan, which asserted that the US-Japan reversion agreement would not alter PRC sovereignty over the Senkakus. No commitment to any specific course of action was suggested, however, nor was recovery of the Senkakus made a prerequisite for the normalization of PRC-Japan relations which took place later that same year. In September 1972, when Prime Minister Tanaka was in Peking, Chou En-lai deliberately downplayed the importance of the issue after Tanaka pressed him on the PRC's stance. Peking has not issued any subsequent statements on the Senkakus. This low key approach will probably continue for some time -- at least as long as Japan's and Taiwan's activities near the Senkakus remain exploratory and not exploitive.

44. The United States' position is one of neutrality on the legal ownership of the Senkakus. Stringent restrictions on U.S. oil firms operating in the area, including a ban on using U.S. crews for drilling operations in disputed waters, are in effect. These restrictions, combined with the difficulties of obtaining suitable rigs, have resulted in contractors' flatly refusing or becoming extremely reluctant to consider drilling in the Senkakus offshore area.

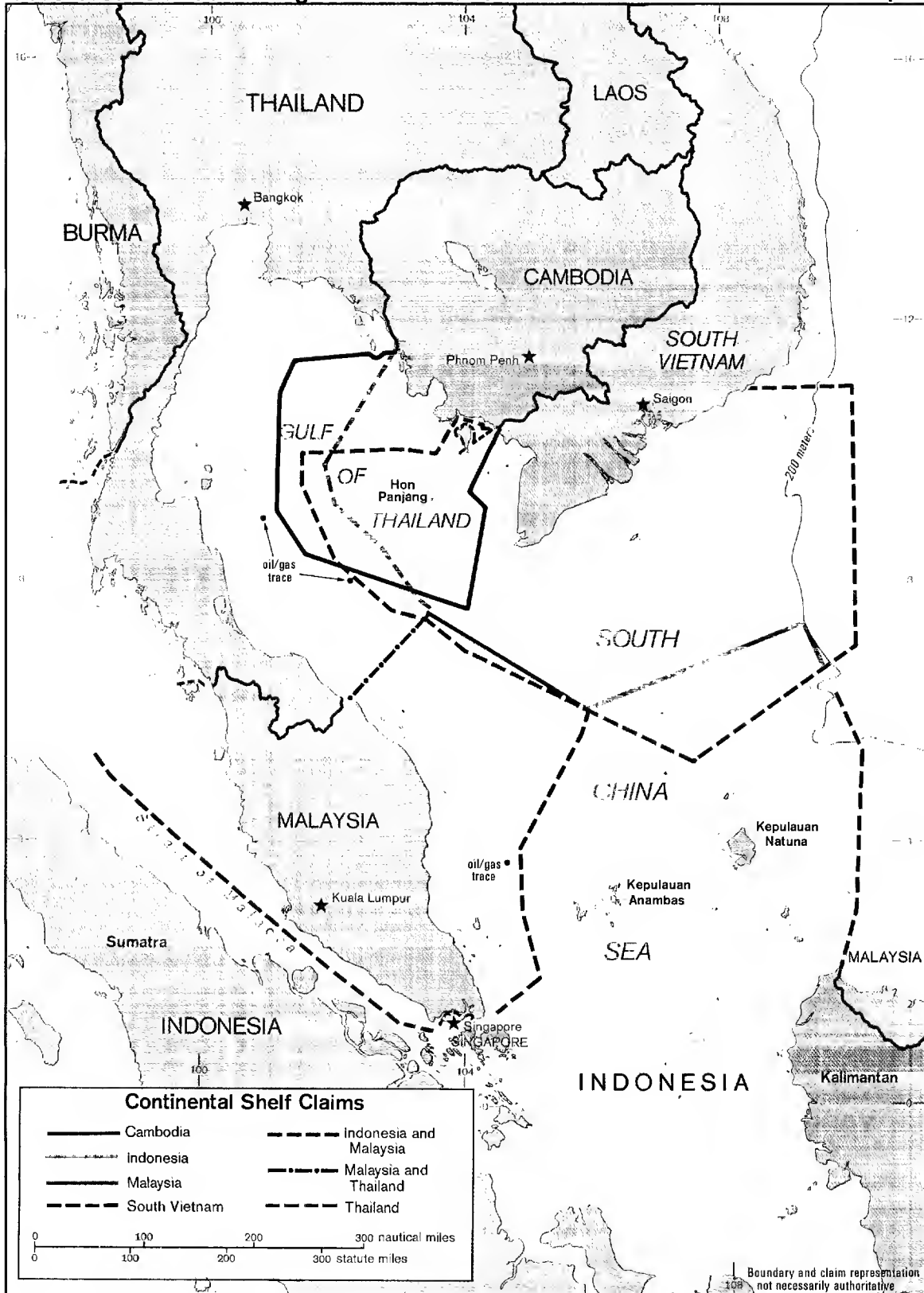
Seabed Jurisdictional Issues

45. The substantive session of the Third UN International Law of the Sea Conference, slated to convene in Caracas in June 1974, will consider some of the questions of ownership of seabed resources and may provide more definitive rules for the allocation of seabed resources in the South China and East China Seas.

46. Existing international law defining jurisdiction over seabed resources on the continental shelf was formulated in 1958 by the Convention on the Continental Shelf, which gives to the coastal state jurisdiction over all resources on and under the adjacent seabed to a depth of 200 meters and

Southeast Asia: Conflicting Continental Shelf Claims

Map H



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to a greater depth where exploitation is possible. Guidelines established for the allocation of the shelf between neighboring states have proved to be inadequate. Consequently, the southwestern part of the South China Sea and the Gulf of Thailand, where depths are less than 200 meters, present a muddled picture of overlapping shelf claims. Bilateral or multilateral delimitation of shelf boundaries is needed so exploration for petroleum can proceed with a minimal threat of boundary squabbles. But only Indonesia -- with sizable oil reserves to protect -- has systematically negotiated with her neighbors to delimit shelf boundaries. Other nations have acted unilaterally (and over-ambitiously) and, consequently, extensive areas of claims are overlapping (Map H).*

47. A particularly thorny problem complicating allocation of the continental shelf in this region is the weight to be given offshore islands in delimiting seabed boundaries. More than one-third of South Vietnam's 120,000-square-mile continental shelf claim is disputed because inequitable methods were used by the contending countries to determine boundaries. For example, South Vietnam used the equidistance principle to draw a median line with Indonesia but disregarded the sizable Indonesian islands in the Anambas and Natuna groups in making this determination. Indonesia, on the other hand, has considered these islands in drawing her median line. As a result, a disputed area of about 12,000 square miles of shelf exists between the two countries. Cambodia has maximized her claim through the use of islands such as the contested Hon Panjang -- no more than 5 square miles in area, virtually unpopulated, and 78 miles from the mainland -- as reference points from which to determine median lines with her neighbors. The unresolved sovereignty status of the Phu Quoc and neighboring islands in the Gulf of Thailand has created overlapping continental shelf claims by South Vietnam and Cambodia. Thailand has also maximized her cut of the shelf by using her own offshore islands as reference points while disregarding those of her neighbors.

**South Vietnam's shelf claim does not conform to the 1958 Continental Shelf Convention; its eastern boundary encloses areas of seabed well outside the 200-meter isobath.*

48. All of the nations bordering the southwestern part of the South China Sea and the Gulf of Thailand have granted petroleum exploration concessions within their continental shelf claims. South Vietnam has granted concessions on only eight of her 30 concession blocks, none of them in disputed areas, but awards to bidders in several more blocks are expected early this year. Thailand has signed contracts with seven oil companies to explore in all 19 of her concession blocks in the Gulf, at least 11 of which extend into disputed waters. Cambodia has granted two concessions, both of them overlapping with concession areas of her neighbors. Indonesia and West Malaysia also have granted concessions that extend into contested areas. Most exploring companies have avoided drilling too close to contested waters. Tenneco and Union, holding exploration contracts from Thailand, have, however, discovered promising oil and gas traces in exploratory wells that are just west of Cambodian and South Vietnamese shelf claims. Discovery of exploitable deposits either here or near any disputed zone will, at a minimum, reduce the chances for early resolution of conflicting continental shelf claims.

49. In the northeastern sector of the South China Sea, jurisdiction over resources of the area outside the 200-meter isobath -- including the contested Paracels, Spratlys, and Pratas Island -- presents a different but equally complex picture. Existing international law does not provide specific rules for determining the jurisdictional limits in semi-enclosed water bodies, such as the South China Sea, where much of the seabed lies at depths of more than 200 meters. The critical issue of determining sovereign rights in such cases is whether the seabeds should be allocated to the states around and in the sea using a median line principle or some modification of it, or whether all seabeds deeper than 200 meters should be considered to be international property. If the former criteria are used, alignment of medians between the claimants clearly will be greatly influenced by the sovereignty status of such island groups as the Paracels and Spratlys. For example, alignment of medians between PRC-claimed and -occupied territory in the Paracels and territory of other South China Sea states will permit Peking to claim a large chunk of the seabed outside the continental shelf. If the latter criteria are used, owners of the islands not on the continental shelf -- including the Paracels, Spratlys, and Pratas Island -- can claim jurisdiction over seabed resources out only to the 200-meter isobath around individual islands, which in most cases is no more than a few miles (Map B).

50. The semi-enclosed sea issue is on the LOS Conference agenda and may well be brought up by littoral nations seeking to establish exclusive resource jurisdiction in their sea areas. What is certain to come up, however, is a widely supported proposal for an expanded coastal-state resource jurisdiction zone. The limit most likely to be adopted, 200 miles, would grant the coastal state jurisdiction over all resources in and under the seas for a distance of 200 miles from the low-water shoreline. (Where distances between different jurisdictions are less than 400 miles, median lines would be constructed.) Thus the nation that successfully asserts sovereignty over the islands in the South China Sea will have bases from which to claim vast portions of the seabed. A 200-mile zone extending along the coastal states and around the islands would blanket the entire Sea./

51. The only parts of the northeastern sector of the South China Sea to be divided into concession blocks by a coastal state are off the west coast of Taiwan and off the northwest coast of the Philippine island of Palawan. Until the PRC makes her shelf claim, the Taiwan concession area presents no problem. The concession blocks of the Philippines, however, reach well outside her continental shelf and into the northeastern part of the contested Spratlys, where islands have recently been occupied by Philippine military forces. One of the blocks in the Spratlys reportedly has been awarded to the Seafront Petroleum Company for exploration. The Philippines Government argues that the trench extending between Palawan and the Spratlys, which is more than 2,000 meters deep, does not mark the edge of the Philippines' continental shelf; it maintains that the trench is only an irregularity in the shelf, which in actuality extends into the Spratlys. Most of the seabed within the Spratlys, however, lies at depths exceeding 200 meters. In view of the relatively deep waters and uncertain sovereignty of the Spratlys, neither Seafront nor any other company is likely soon to move its exploration equipment into the islands.

52. The continental shelf in the East China Sea presents still another sovereignty puzzle, the result of the use of different criteria by the contending states to define their shelf claims. While none had officially claimed any part of the shelf prior to 1968, the presumption of oil in the seabed following promising geophysical surveys produced a flurry of unilateral pronouncements. Much of the difficulty in defining boundaries on the shelf relates to

the presence of the 2,700-meter-deep Okinawa Trough, which lies between the Ryukyu Islands and the Senkakus and stretches from Kyushu to Taiwan. Although Taiwan considers the China portion of the shelf to extend eastward only to the western edge of the Trough (the PRC has remained relatively quiet on this issue), Japan contends that the Trough is merely an irregularity and that the shelf actually ends just east of the Ryukyus. This definition would grant to Japan jurisdiction over a considerably larger piece of the East China Sea seabed than if the edge were determined to lie west of the Trough. Taiwan's shelf claim and that of South Korea (which overlaps claims of both Taiwan and Japan) are based on the questionable "natural prolongation of land territory" concept, which presumes that the undersea extension of a state's land territory is clearly evident on the sea floor.

53. Taiwan, Japan, and South Korea have all parceled out petroleum concession blocks on their shelf claims. The oil strike recently reported in Taiwan's Gulf Oil concession, 100 miles west of the Senkakus, indicates that a sizable oil field may be discovered in an area of conflicting concessions. The likelihood that the PRC may soon define her shelf claim will add another potentially explosive factor to the East China Sea Continental Shelf dispute.

Political Implications and Outlook

54. The claimants to the islands and adjacent seabeds are a diverse lot with conflicting national interests. There is the clear possibility that current disputes over the islands will become yet another major source of friction among them.

55. Most serious is the possibility for upset in relations among the major powers. China and Japan obviously have a problem in the Senkakus sector if and when Japan follows Taiwan's lead in exploring its oil potential. At that point, Peking can be expected to assert its claims more vigorously than before. Urgently in pursuit of oil supplies close to home, Tokyo can be expected to hold its legal ground in order to maintain a bargaining position in the anticipated negotiation over division of continental shelf resources. While neither China nor Japan would want to jeopardize its larger interests vis-a-vis the other by resorting to force -- and a military confrontation seems

highly unlikely -- harsh and threatening words might be used, leading to strains in a relationship that presently seems destined to flourish.

56. Although not a party to any of the island disputes, the US might also find its relationship with China impaired in certain circumstances. There is the recognized problem of American-owned and -operated oil exploration vessels and drilling rigs, liable to Chinese harassment if they venture into waters claimed by Peking. Beyond this is another potential US problem in the unlikely event that Peking tries to seize Nationalist-held Pratas. This might call into question the basic assumptions of the Sino-US detente. The Chinese are well aware of this, of course, and it is a major incentive for caution on their part. The US would also face a dilemma if China moved militarily into the Spratlys.

57. China's relations with the Southeast Asian nations -- except for the two Vietnams -- do not appear to have been harmed by its precipitate military action in the Paracels, though the Chinese may now seem a bit more menacing to some local leaders. Even without further Chinese military action in the region, there may be additional incentives for Southeast Asians to maintain a common front on such issues as the pace of establishing diplomatic relations with Peking. Events might also lead, of course, to new and expensive military competition between such claimants to the Spratlys as the Philippines and South Vietnam, and in the Gulf of Thailand, between South Vietnam, Cambodia, and Thailand. Progress toward regional cooperation might thereby be hampered.

58. In pointing up major political implications of the East Asian island issue, it should be emphasized that none of the claimants presently appears to be looking for a fight with the Chinese. The avoidance of conflict is hinged, however, on Peking's willingness -- now that the Paracels issue is out of the way -- to settle its claims through negotiation in the course of generally improving relations with the various claimants. The Chinese have repeatedly stated that this is the direction in which they are moving, and have reiterated this, publicly and privately, since the Paracels incident. China would probably have considerable time in which to expect improvement in its relations with other nations and to negotiate agreements on ownership of these islands. But the accelerating search for oil seems likely to force the issue in some cases.

APPENDIX

The following is a listing of recent basic studies on East Asian island groups. They contain additional information, particularly historical evidence of claims and physical geographic description.

CIA/BGI GR 71-9, The Senkaku Islands Dispute: Oil Under Troubled Water?, May 1971. S

CIA/BGI GM 72-1, The Spratly Islands Dispute, August 1971. S

CIA/BGI GM 72-4, The Paracel Islands Dispute, April 1972. S

PN 61.2632 CIA/DDI/OBGI Background Paper, China: The Offshore Islands, April 1973. S/NFD

CIA/BGI RP 74-9, The West Coast Korean Islands, January 1974.
C/Controlled Dissem

PN 61.2679 CIA/DDI/OBGI (Research Paper in progress), The East Asian Continental Shelf: Resources, Claims, and Problems, February 1974.

SECRET

MEMORANDUM FOR: Mr. Colby

This tells more than you probably want to know about the geography of the contested islands and surrounding waters -- although if you were less busy, you might find it sort of fun. The central message is that the islands themselves are not very important to anyone, but various of our old allies, and our new "friends" in Peking, want to establish sovereignty in order to be able to claim rights to oil on the adjacent seabeds.

The legal issues are summed up on pages 16-20; the political implications and outlook on pages 20-21.

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